No. 79-413

IN THE

Supreme Court of the United States

October Term, 1979

ADELYN J. CRAWFORD, Appellant

v.

THE STATE OF NEW YORK

Appeal from the Court of Appeals
of the State of New York

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant, ADELYN J. CRAWFORD, appeals from the order of the Court of Appeals of The State of New York, which affirmed the order of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, dismissing the claim of Appellant for false imprisonment and illegal detention of Appellant at a state mental institution from April 7, 1955 to January 23,

1973. The affirmance by the Court of Appeals was upon the opinion of the Appellate Division. The opinion of the Court of Appeals did not consider, as valid, the federal constitutional challenges of Appellant raised in her brief before that Court.

Appellant submits herewith her jurisdictional statement as required by Rule 15 of the Rules of the Supreme Court of the United States.

THE OPINIONS BELOW

The opinion of the Court of Appeals of the State of New York is not yet reported. It is set forth in Appendix A to this Statement (p. A-1).

The prior opinion of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department is reported at 60 A.D.2d 729,

and is set forth in Appendix A (pp. A-2 - A-9, infra).

The lower Court order, that of the Court of Claims of the State of New York, is not reported; however, it is set forth in Appendix A to this Statement (pp. A-10 - A-13).

Appellant has set forth in Appendix B the opinion of the Court of Appeals (pp. B-1 - B-14) in the case of Matter of Coates, 9 N.Y.2d 242, 213 N.Y.S. 2d 74, 17 N.E.2d 797, appeal dismissed, 82 S.Ct. 147, 368 U.S. 34, 7 L.Ed.2d 91 (1961). It is the very due process requirements under the 14th Amendment to the United States Constitution, that the Court of Appeals held were satisfied in Matter of Coates, that it rejected by basing its decision upon the opinion of the Appellate Division (pp. A-2 - A-9, infra).

GROUNDS OF JURISDICTION

The nature of the proceeding consists of a claim by the Appellant for her false imprisonment and illegal detention in Harlem Valley State Hospital, an institution for the mentally ill, operated and owned by The State of New York, from April 7, 1955 to January 7, 1973. The claim is annexed hereto in Appendix D (pp. D-3 - D-24). The claim was prepared and duly served upon The State of New York and filed in the Court of Claims of the State of New York in December, 1973.

The State of New York, by its Attorney General, applied in the Court of Claims to dismiss the claim upon various grounds, the one germane to this Statement being the failure to state a cause of action or not stating a legally viable claim. The Court of Claims denied

that branch of the motion of The State of New York which sought to dismiss the Appellant's claim against it. The order of the Court of Claims is set forth in Appendix A (pp. A-10 - A-13).

Thereafter, The State of New York served and filed a Notice of Appeal to the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, contending that the claim is invalid. That Court reversed the lower Court, on the law and the facts, and dismissed the claim. A copy of that opinion is set forth in Appendix A (pp. A-2 - A-9).

The Appellant thereafter appealed to the Court of Appeals of the State of New York. In that Court, the federal constitutional questions were raised by Appellant's present counsel who did not represent her on the appeal brought by The State of New York in the Appellate

Division of the Supreme Court. These questions were not raised in the intermediate Court. It must be remembered, however, that the Appellant here was the Appellee in the Appellate Division. Therefore, she only replied to the questions raised by The State of New York in that Court.

The gravamen of the constitutional challenge was under the United States Constitution, 14th Amendment, in that the Appellant never received notice pursuant to Section 76 of the Mental Hygiene Law, mandating the issue of her commitment to a mental institution to be heard in a Court of law before a jury of her peers. The lack of post-commital notice is conceded by The State of New York in its brief. An excerpt from that brief is set forth in Appendix D (pp. D-35 - D-71).

The Court of Appeals affirmed

the order of the Appellate Division based on its opinion. The order of the Court of Appeals which contains that statement is set forth in Appendix A (p. A-1). The Court of Appeals ignored its holding in Matter of Coates, supra. That aspect of Appellant's contentions shall be considered in her Statement of the Case, infra.

The order sought to be reviewed is that of the Court of Appeals of the State of New York entered June 14, 1979, affirming the order of the Appellate Division which had reversed the order of the Court of Claims. No motion for rehearing was filed in the Court of Appeals. Notice of Appeal was filed in the Court of Claims on August 24, 1979. That notice is found in Appendix D (pp. D-1 - D-2).

Jurisdiction of the Supreme Court of the United States to review the decision of the Court of Appeals of the State of New York is conferred by 28

U.S.C. Section 1257(2). Jurisdiction is sustained by the following cases:

Addington v. State of Texas, ___ S.Ct. ___, U.S. ___, 60 L.Ed.2d 323 (1979).

Application of Gault, 87 S.Ct. 1428, 387 U.S. 1, 18 L.Ed. 2d 527 (1967).

STATUTE INVOLVED

Pertinent portions of the New York Mental Hygiene Law, Section 76 are set forth in Appendix C (p. C-1, infra).

QUESTION PRESENTED

Where a state statute providing for review of an order of commitment of an individual to a mental institution by way of notice to the individual and a mandatory trial by jury is not followed in such post-commitment proceedings commenced by the State, is such failure a denial of due process of law and a

deprivation of liberty and, therefore, repugnant to those requirements of the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

The Appellant in 1955 had a twelve year old daughter to whom she was devoted. She was a responsible member of the community gainfully employed as a business woman.

It is contended by the Appellant that:

a) she was never a danger to society and she was never mentally incompetent;

b) all analyses and statements in Grasslands and Harlem Valley records, claiming danger to society, mental illness and mental incompetence, in any form, are and always have been wilful

and malicious lies;

c) she was falsely imprisoned in a mental institution for almost eighteen (18) years;

d) her constitutional right of freedom as a responsible, competent head of household, devoted legal guardian, business manager and former stockholder, as well as all other legal rights were deliberately and maliciously ignored, denied and suppressed from the outset in Larchmont on March 22, 1955 and thereafter on a daily basis for eighteen years;

e) the State of New York incarcerated her at the outset only to determine her personality traits. Subsequently and in November, 1955 at Harlem Valley State Hospital, the psychiatrists (employees of the State of New York) discovered that she was not only a person who was a responsible member of society, but she also held a very responsible

position in life. She also had a very responsible legal mind and intended to seek justice in the Courts for her false imprisonment, although at that point she was confined for approximately eight (8) months. In response to her intent known to Harlem Valley State Hospital, the psychiatrists as employees of the State of New York maliciously lied, perpetuated and intensified her incarceration for almost eighteen years with malicious and premeditated intent to destroy her responsible legal mind and memory.

The Appellant's activities and way of life prior to her confinement did not change in any way after she was released from confinement.

The Appellant was confined to Harlem Valley State Hospital in New York from April 23, 1955 to January 7, 1973 pursuant to an order of commitment of the Supreme Court of the State of New

York, County of Westchester. That order was based upon a petition and certificates of the Department of Mental Hygiene. These documents are set forth in Appendix D (pp. D-72 - D-97). The genesis of the commitment is found in Section 74 of the Mental Hygiene Law. The Appellant received no notice of this proceeding. At p. 5, lines 153-5 (p. D-92), service of notice was deemed inadvisable because "it would unduly disturb patient." Thus we have the first step in an ex parte commitment.

After being committed, the Appellant failed to receive the notice of that commitment and she was not afforded the right to have a trial by jury under Section 76 of the Mental Hygiene Law (p. C-1).

Upon her release in 1973, she served a claim against The State of New York for false imprisonment and illegal

detention. This claim withstood attack in the Court of Claims; however, it was dismissed in the intermediate Appellate Court of New York, the Appellate Division of the Supreme Court, and that order was affirmed by the highest Court in New York, the Court of Appeals, in a terse order relying on the opinion of the Appellate Division.

HOW THE FEDERAL QUESTION WAS RAISED

Appellant first raised the question of due process requirements under the U.S. Constitution in the Court of Appeals. Her counsel in that Court was not the same as on her appeal to the Appellate Division. These points were contained in her brief and presented at oral argument.

Points I and II of the Brief read as follows:

"POINT I - The Appellant was Deprived of Due Process of Law at Every Stage of the Proceedings and Such Failure Results in a Lack of Jurisdiction Over her Person.

"POINT II - The Constitutional Issues are Contained in the Claim Filed With the Court of Claims."

In support of those points, the Appellant discussed cases decided by this Court as well as the all important Matter of Coates, supra. Those points are set forth in Appendix D (pp. D-35 - D-71).

These questions were not considered by the Court of Appeals because their order relies solely upon the opinion of the Appellate Division. That opinion does not discuss any issues of constitutional dimension. The Court of Appeals' jurisdiction is to consider questions of law only. It is respectfully submitted that it is now this

Court's duty to consider these questions especially in view of the star chamber quality of the proceedings in which the Appellant found herself.

The Appellant will acknowledge that there is a basis wherein this Court cannot review a state decision if that decision rests on an adequate state ground. Murdock v. Memphis, 20 Wall. 590, 22 L.Ed. 429 (1875). However, that rule cannot dilute this Court's power to protect a federal constitutional right which would otherwise be thwarted by the reliance of the highest Court of the State upon an adequate state ground. Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 82 L.Ed. 685, 58 S.Ct. 443.

Furthermore, it is obvious that the Court of Appeals has evaded the consideration of the federal issue which was fully discussed in Appellant's brief filed in that Court. We respectfully

submit that this Court may look upon the purported adequate state ground as only persuasive rather than only controlling in its decision concerning probable jurisdiction. Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 129, 89 L.Ed. 2092, 65 S.Ct. 1475; Ward v. Board of County Com'rs of Love County, 253 U.S. 17, 64 L.Ed. 751, 40 S.Ct. 419; Terre Haute & I.R. Co. v. Indiana ex rel. Ketcham, 194 U.S. 579, 48 L.Ed. 1124, 24 S.Ct. 767.

It was Justice Holmes who stated:

> "whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

See Brown v. Western Ry. of Alabama, 338 U.S. 294, 94 L.Ed. 100, 70 S.Ct. 105.

In such situations where the

state court has not considered the federal constitutional issues urged by a party, this Court may vacate that judgment and remand so that the state Court will have an opportunity to clarify what it has ruled. California v. Krivda, 409 U.S. 33, 34 L.Ed.2d 45, 93 S.Ct. 32, certiorari denied 412 U.S. 919, 37 L.Ed.2d 145, 93 S.Ct. 2734; Dept. of Motor Vehicles v. Rios, 410 U.S. 425, 35 L.Ed.2d 398, 93 S.Ct. 1019.

THE QUESTION IS SUBSTANTIAL

Before discussing the impact of recent cases decided by this Court upon the issues in the case sub judice, it is necessary to expose the real nature of Appellant's claim.

She was confined to a state mental institution after being arrested for the misdemeanor of malicious mischief

and forcible entry. Her offense was not murder or some other heinous crime. Furthermore, the Court of her arraignment was the local Justice Court, not a state Court. This then is the setting of the "dangerousness" of the individual.

Thereafter she is a mental patient for eighteen years. The Mental Hygiene Law in 1955 was anachronistic. The Appellate Division so stated in their opinion (pp. A-2 - A-9). It was only in 1973 that the Appellant was released because of the review procedures then enacted into law. However, there was one saving feature in the commitment statute in 1955. That was Section 76 of the Mental Hygiene Law (p. C-1). Interpreting that section in Matter of Coates, supra (pp. B-1 - B-14), the highest Court in New York stated:

> "This Court has long recognized that the exact meaning and scope of the phrase 'due process of law' cannot be defined with precision (Stuart v. Palmer, 1878, 74 N.Y. 183, 191). We there, however, stated what we consider to be the very least which would satisfy due process as follows: 'due process of law requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this'. (Emphasis supplied.) See, also, Lyons v. Goldstein, 290 N.Y. 19, 24-25, 47 N.E.2d 425, 428. Due process does not, however, 'guarantee to the citizen of a state any particular form or method of state procedure' (Dohany v. Rogers, 281 U.S. 362, 269, 50 S.Ct. 299. 302, 74 L.Ed. 904). 'Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard.' (Ibid.)
>
> "Consequently, if the statute before us contained no provision affording appellant an opportunity to litigate fully the question of her mental illness and the propriety of the proceedings which led to her confinement, it would unquestionably be violative of due process."

The saving feature of the law was then pronounced.

> "In the case before us, ample provision is made in section 76 for a complete rehearing and review ab initio. Thus the finality of the court order is subject to the right of review. In our opinion, this provision saves the constitutionality of Section 74. Moreover, it should be noted, the alleged mentally ill person is not declared 'incompetent'; she is merely hospitalized in the first instance for not more than 60 days, and her hospitalization may then be continued beyond that period only if 'the person in charge of the institution * * * finds that such patient is in need of continued care and treatment'.
>
> "In Matter of Blewitt, 131 N.Y. 541, N.E. 587, appellant sought to set aside a commission and proceedings in lunacy, and the appointment of a committee, on the ground that the alleged lunatic had no notice of the proceedings - or, in the alternative, that an issue be awarded to try the fact of lunacy. Special Term denied the relief to vacate, but made an order directing a jury trial of the issue. The order was affirmed by General Term. This court, in affirming the orders below, and noting that attempts

> are frequently made to get control of the person and property of another by the aid of lunacy proceedings, stated (131 N.Y. at page 547, 30 N.E., at page 589) that 'a very clear case should be made before the court should proceed in lunacy proceedings, in the absence of actual personal and written notice to the party, and that, unless such a case is made by the petition or affidavits, and an order made by the court dispensing with personal notice and providing for notice to relatives or others in lieu of personal notice, an adjudication, in the absence of such notice, should be set aside.' The order below was nevertheless affirmed on the ground that appellant was permitted to 'traverse, not the inquisition, but the original petition, thereby putting him in the same position as upon an original hearing thereon', and for other reasons making it very clear that a full opportunity had been presented for appellant to litigate the question of his sanity. (emphasis supplied).
>
> "Appellant contends that Section 76 does not cure the defect in Section 74 because the hearing it provided for is after, rather than before, the order of certification has become final, and that she will have no means of determining what proof will be offered

against her. This contention is wholly without merit inasmuch as the finality of the order is subject to review under section 76. Moreover, the Supreme Court of the United States, in somewhat analogous situations, has made it clear that the provisions of an act authorizing the seizure of property without a prior judicial hearing are 'rescued from constitutional invalidity' by provisions affording the claimant a subsequent judicial hearing as to the propriety of the seizure (Societe Internationale, etc. v. Rogers, 357 U.S. 197, 211, 78 S.Ct. 1087, 1095, 2 L.Ed.2d 1255, see also Falbo v. United States, 320 U.S. 549, 554, 64 S.Ct. 346, 348, 88 L.Ed. 305)."

Several cases of this Court were then discussed. The Coates opinion is set forth in its entirety herein (pp. B-1 - B-14).

It has been conceded by the Appellee that the Appellant did not receive notice of her commitment before the commencement of the proceeding and she did not receive notice after the order of commitment was final pursuant

to Section 76. Thus the genesis of her confinement was "violative of due process."

However, that fact did not seem to disturb the Court of Appeals because its affirmance is based upon the Appellate Division opinion. Has it inferentially rejected appellant's claim by not considering it? Does its affirmance based upon, assuming arguendo, adequate state grounds preclude this Court's consideration of the case? We think not. The constitutional issue goes to the heart of this proceeding. It pervades its every sinew. It has been well stated before:

> "The loss of liberty and the infringement of other fundamental rights resulting from civil commitment are certainly cognizable under the due process clause. Thus the magnitude of the state and individual interests in commitment must be compared in the context of each procedural protection. The magnitude of the individual

> interests, considered alone, suggests a need for strong safeguards. As noted in the Introduction, the individual may be confined indefinitely, and, if he is released, the lingering stigma of mental illness may handicap him in maintaining personal relationships, in finding a job, and in gaining admission in school. Due process, however, requires the application of procedural safeguards only to the extent that they ensure fair proceedings or prevent erroneous commitments and do not frustrate more compelling state objectives."

87 Harvard Law Review 1190 (1974), at p. 1272.

Considering the essential ingredient of notice, it has been observed:

> "Although notice is considered a fundamental element of due process in both civil and criminal cases, many state commitment statutes either fail to require notice or require the provision of only minimal amounts of information. This policy is grounded in the fear that the service of technical and confusing legal papers on a mentally ill person might defeat the state's beneficient motives by traumatizing the individual and reducing the likelihood of successful treatment. The fear of trauma, however, presupposes that the individual is mentally ill, an issue that should remain open until the commitment proceedings are completed. Moreover, involuntary confinement in a mental institution would itself seem to be a traumatizing experience, and it is unlikely that notice would significantly increase that trauma. Indeed, service of legal papers which inform the individual that he will be accorded procedural protections may actually reduce the individual's anxiety."

87 Harvard Law Review 1190 (1974), at p. 1273.

It is the balance of the police power of the state against the rights of an individual that is at stake in this case. Is the parents patrie doctrine intended to wither the freedom of citizens or is there not a delicate balance to be preserved by the state Courts and, if not, then by the highest Court in the land.

This Court created that balance

in Addington v. Texas, No. 77-5922, ___ U.S. ___, 60 L.Ed.2d 323 (1979), when it stated:

> "This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. See, e.g. Jackson v. Indiana, 406 U.S. 715 (1972); Humphrey v. Cady, 405 U.S. 504 (1972); In re Gault, 387 U.S. 1 (1967); Specht v. Patterson, 386 U.S. 605 (1967). Moreover, it is indisputable that, involuntary commitment to a mental hospital after a finding of probable dangerousness to self or others can engender adverse social consequences to the individual. Whether we label this phenomena 'stigma' or choose to call it something else is less important than that we recognize that it can occur and that it can have a very significant impact on the individual."

The very essence of pre-commitment notice and post-commitment review is essential in view of the vagaries of medical diagnosis.

> "At one time or another every person exhibits some abnormal behavior which might be

> perceived by some as symptomatic of a mental or emotional disorder, but which is in fact within a range of conduct that is generally acceptable. Obviously such behavior is no basis for compelled treatment and surely none for confinement. However, there is the possible risk that a fact finder might decide to commit an individual based solely on a few isolated instances of unusual conduct. Loss of liberty calls for a showing that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior. Increasing the burden of proof is one way to impress the fact-finder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered.
>
> "The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state. We conclude that the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence."

Addington v. Texas, supra.

Providing for notice before and after commitment is one way of decreasing the risk of error in involuntary commitment. The Court of Appeals of New York found the statutory process to be valid under the Constitution in Matter of Coates yet it did not so find for ADELYN CRAWFORD. This omission was error. It drew the validity of Sections 74 and 76 into question and thus involved this Court's appellate jurisdiction. If the Court of Appeals sustained the validity of those statutes because of post-commitment review yet denied that review to the Appellant, then certainly it is time for this Court to construe the due process requirements of the Constitution as they apply to those statutes. The Court of Appeals had proclaimed the public policy of New York in Matter of Coates, supra, in that post-commitment review satisfies the due process requirements of the Constitution.

It has ignored that public policy on behalf of the Appellant and thus draws the essential validity of Section 76 into question. Cox Broadcasting Corp. v. Cohn, supra. It has long been stated by this Court:

> "It is our province to 'analyze the facts in order that the appropriate enforcement of the federal right may be assured,' Norris v. Alabama, 294 US 587, 590, 79 L.Ed. 1074, 1077, 55 S.Ct. 579 (1935), and while the conclusions reached by the highest court of the state 'are entitled to great respect . . . it becomes our solemn duty to make independent inquiry and determination of the disputed facts . . .' Pierre v. Louisiana, supra, 306 US at 358, 83 L.Ed. at 760."

Whitus v. Georgia, 385 U.S. 545, 603, 17 L.Ed. 599, 87 S.Ct. 643.

The rights of the individual cannot be preserved in the treatment room of an institution. Only the courts can provide that protection.

> "Finally, the initial inquiry in a civil commitment

proceeding is very different from the central issue in either a delinquency proceeding or a criminal prosecution. In the latter cases the basic issue is a straightforward factual question - did the accused commit the act alleged. There may be factual issues to resolve in a commitment proceeding, but the factual aspects represent only the beginning of the inquiry. Whether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the meaning of the facts which must be interpreted by expert psychiatrists and psychologists. Given the lack of certainty and the falibility of psychiatric diagnosis, there is a serious question as to whether a state could ever prove beyond a reasonable doubt that an individual is both mentally ill and likely to be dangerous."

Addington v. Texas, supra.

Anything less is a usurpation of the judicial function.

> "The subleties and nuances of psychiatric diagnosis render certainties virtually beyond reach in most situations. The reasonable doubt standard of criminal law functions in its realm because there the standard is addressed to specific, knowable facts. Psychiatric

diagnosis, in contrast, is to a large extent based on medical 'impressions' drawn from subjective analysis and filtered through the experience of the diagnostician. This process often makes it very difficult for the expert physician to offer definite conclusions about any particular patient. Within the medical discipline, the traditional standard for 'factfinding' is a 'reasonable medical certainty.' If a -- trained psychiatrist has difficulty with the categorical 'beyond a reasonable doubt' standard, the untrained lay juror - or indeed even a trained judge - who is required to rely upon expert opinion could be forced by the criminal law standard of proof to reject commitment for many patients desperately in need of institutionalized psychiatric care. See Note, 42 Ford. L.Rev., at 624. Such 'freedom' from a mentally ill person would be purchased at a high price."

Addington v. Texas, supra.

The effect on reversing the Court of Appeals is not at issue. What the effect of the noting of probable jurisdiction, subsequent briefing, oral argument and eventual decision by this

Court is of little moment. Let the example of In re Ballay, 482 F.2d 648 (U.S. App. D.C. 1973) provide the raison d'etre.

> "We fully reject the government's argument that any collateral consequences which might emanate from the present commitment would remain, even were we to reverse, because of the two prior commitments. Initially, we note that with respect to the proceedings leading to the earlier commitments there is no indication that there were jury trials, that any oral testimony was presented, or even that Mr. Ballay was present. Thus the instant case first presents for appellant the aura of a jury determination. We reject the argument for a more fundamental reason, however, which was aptly summarized by the Court in Sibron v. New York, supra, 392 U.S. at 56-57, 88 S.Ct. at 1899 (1968) when an identical argument was faced:
>
> "[W]e see no relevance in the fact that Sibron is a multiple offender. . . . A judge or jury faced with a question of character, like a sentencing judge, may be inclined to forgive or at least discount a limited number of minor transgressions . . . . It is impossible for this Court to say at what point the number of convictions on a man's record

> renders his reputation irredeemable. And even if we believed that an individual had reached that point, it would be impossible for us to say that he had no interest in beginning the process of redemption with the particular case sought to be adjudicated. . . . [I]t is far better to eliminate the source of a potential legal disability than to require the citizen to suffer the possibly unjustified consequences of the disability itself for an indefinite period of time before he can secure adjudication. . . . (Emphasis added). (Footnotes omitted).

The Court has agreed with that concept.

> "We need not address these broad questions here. It is clear that Jackson's commitment rests on proceedings that did not purport to bring into play, indeed did not even consider relevant, any of the articulated bases for exercise of Indiana's power of indefinite commitment. The state statutes contain at least two alternative methods for invoking this power. But Jackson was not afforded any 'formal commitment proceedings addressed to [his] ability to function in society,' or to society's interest in his restraint, or to the State's ability to aid him in attaining competency through custodial care or compulsory treatment,

> the ostensible purpose of the commitment. At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."

Jackson v. State of Indiana, 406 U.S. 715, 32 L.Ed.2d 435, 2 S.Ct. 1845.

The most recent expression of this Court's view in this area is found in Parham, Commissioner, Department of Human Resources of Georgia, et al. v. J. L. et al., No. 75-1690 (June 20, 1979).

There the question of voluntary commitment of persons under eighteen years of age by their parents was considered. The fact pattern is different from the case at bar. The philosophy is the same.

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved

> and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews v. Eldridge, 424 U.S. 319, 335 (1976); Smith v. Offer, 431 U.S. 816, 847-848 (1977)."

Parham, pp. 13-14.

However, this Court decided that procedural safeguards were not really necessary because it is the parent that has the authority to commit his child subject to medical verification.

> "The parens patriae interest in helping parents care for the mental health of their children cannot be fulfilled if the parents are unwilling to take advantage of the opportunities because the admission process is too onerous, too embarrassing or too contentious. It is surely not idle to speculate as to how many parents who believe they are acting in good faith would forego state-provided hospital care if such care is contingent on participation in an adversary proceeding designed to probe their motives and other private family matters in seeking the voluntary admission."

Mr. Justice Brennan, in his

dissenting opinion, in Parham, stated:

> "Nor can the good faith and good intentions of Georgia's psychiatrists and social workers, adverted to by the Court, see maj. op. at 30, excuse Georgia's exparte procedures. Georgia's admitting psychiatrists, like the school disciplinarians described in Goss v. Lopez, 419 U.S. 565 (1975), 'although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed.' Id., at 580. See A-36-40, Testimony of Dr. Messinger. Here as in Goss the 'risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the . . . process'. 'Fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights . . .' 'Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.' Goss v. Lopez, supra, at 580, quoting in part from Anti-Facist Committee v. McGrath, 341 U.S. 123, 171-172 (1951) Frankfurter, J., concurring)."

This expression is the essence of Appellant's argument. Secrecy is insidious. Secrecy which emanates from alleged minor infractions of the law becomes a cloud which prevents the light of inquiry. That is all that is claimed by Appellant -- inquiry -- the process of inquiry -- the due process of inquiry.

The failure to provide a hearing to Appellant perpetuated the secrecy surrounding her commitment. The result was an imprisonment based upon due process deprivation. This result is actionable in tort. The need for procedural safeguards imposes a duty to be perceived. Failure to meet that duty gives rise to a cause of action by the aggrieved party.

CONCLUSION

For the reasons stated, Appel-

lant respectfully submits that the question presented in this appeal is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its resolution.

Respectfully submitted,

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APPENDIX A

COURT OF APPEALS
STATE OF NEW YORK

No. 268

Adelyn J. Crawford,
Appellant,

vs.

State of New York,
Respondent.

Order affirmed, with costs, for reasons stated in the memorandum at the Appellate Division (60 A D 2d 729).

Concur: Cooke, Ch.J., Jasen, Gabrielli, Jones, Wachtler and Fuchsberg, JJ.

SUPREME COURT - APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

December 29, 1977 31306

ADELYN J. CRAWFORD, Respondent,

v.

STATE OF NEW YORK, Appellant.

(Claim No. 58104-A.)

Appeal from so much of an order of the Court of Claims, entered May 11, 1976, as denied a motion to dismiss a claim against the State of New York.

Following claimant's arraignment on a charge of malicious mischief and forcible entry, the Justice of the Peace ordered claimant to be psychiatrically evaluated at Grasslands Hospital. It was determined that she was incapable of defending herself due to mental incompetency. Claimant was certified by the Dutchess County Court to be mentally ill pursuant to the Mental Hygiene Law and

ordered committed on April 6, 1955 to Harlem Valley State Hospital, where she remained until discharged on January 24, 1973.

Claimant filed a claim against the State and others on December 27, 1973 wherein she set forth causes of action sounding in (a) false imprisonment, (b) negligence in caring for and diagnosing her condition, (c) fraud in refusing to honor a promise of discharge in 1966, and (d) wrongful interference with her right to pursue a business transaction. On April 13, 1976 the Court of Claims dismissed the claim as to all named defendants except the State, but denied the State's motion for summary judgment dismissing the claim. This appeal ensued.

Before discussing the merits, we feel constrained to review briefly the evolution of the statutory scheme applicable to the factual pattern herein.

Such review is required because the earliest court order relied upon by the State to justify retention of claimant is dated November 29, 1968, 13 years and 7 months after the order of commitment. Such a review necessarily begins with a statement of the law applicable to involuntary commitments in 1955. Article 5 of the Mental Hygiene Law (L. 1927, ch. 426, amd. by L. 1933, ch. 395) did not require the authorities of a State hospital to periodically obtain orders of retention entailing a requisite review of a patient's mental condition. The order of commitment of April 6, 1955 did not limit the duration of confinement, nor did it require the custodial institution or any other entity to examine and report to any court or agency regarding the condition of the confined individual. Law reflects climate and attitudes, and, unfortunately, until the law was enlighten-

ingly amended, involuntary admittees to mental hospitals were solely dependent upon family members and friends to petition for their release. It was not until 1964 that the Mental Hygiene Law was amended to require that "3 [I]f the director of a hospital, in which a patient is retained * * * shall determine that the condition of such patient requires his further retention in a hospital, he shall, if such patient does not agree to remain in such hospital as a voluntary or informal patient, apply during the period of retention authorized by the last order of the court * * * for an order authorizing further continued retention of such patient * * *." (Mental Hygiene Law, § 73, added by L. 1964, ch. 738.) This 1964 amendment, however, had no application to persons confined in mental institutions prior to its effective date, September 1, 1965. To correct

this statutory defect, section 73 was amended (L. 1968, ch. 1050) so as to insert in section 73 the requirement that as to those committed prior to September 1, 1965, an application for a further retention order be made "within one year after April first, nineteen hundred and sixty-eight or during the period of retention authorized by the last order of the court * * *." (Emphasis added.) The present law (Mental Hygiene Law, § 31.33, subd. [d]) repealed the 1964 enactment, as amended in 1968, but continues the requirement of periodic application for retention orders if the director of the confining institution determines that the condition of the patient requires such action.

From this review, we conclude that the State had no statutory duty to apply for further retention orders of claimant from April 6, 1955, the date of

commitment, to 1964, and thereafter, was only required to seek such an order within one year after April 1, 1968. This the State did, and there are no allegations, express or inferable, in claimant's claim that the order of commitment in 1955 and the subsequent orders of further retention, obtained in 1968, 1969, 1970 (24 months), were invalid on their face or that the courts lacked jurisdiction of the subject matter or claimant's person (Ferrucci v. State of New York, 42 A D 2d 359, 361, affd. 34 N Y 2d 881). Consequently, claimant's cause of action for false imprisonment must be dismissed (Lauer v. State of New York, 57 A D 2d 673; Ferrucci v. State of New York, supra). Claimant's reliance on O'Connor v. Donaldson (422 U.S. 563) is misplaced. There is no allegation herein that the State acted intentionally or maliciously to deprive claimant of her rights. Such

an allegation was clearly deemed essential by the court in O'Connor.

Claimant's second cause of action based on the alleged negligence of the State's doctors, their faulty diagnosis of her mental condition and their unsound methods of treatment, must also be dismissed. The operation of a State institution is clearly governmental and subject to governmental and administrative decisions and the State has not waived its immunity from liability resulting from said decisions (Ferrucci v. State of New York, supra; Young v. State of New York, 40 A D 2d 730, 732, mot. for lv. to app. den. 31 N Y 2d 646). The frequency or quality of care being a governmental function, liability will not attach for improper medical decisions (Bellows v. State of New York, 37 A D 2d 342, 344). Claimant's third and fourth causes of action are without merit and

require no discussion.

Order insofar as appealed from reversed, on the law and the facts, without costs, and claim dismissed.

KANE, J. P., MAHONEY, MAIN, LARKIN and MIKOLL, JJ., concur.

At a Motion Term of the Court of Claims held at 28 Market Street, City of Poughkeepsie, County of Dutchess, New York, on the 6th day of April, 1976.

P R E S E N T :

HONORABLE DOROTHEA E. DONALDSON

Judge of the Court of Claims

ADELYN J. CRAWFORD,

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.

O R D E R

CLAIM NO. 58104-A

MOTION NO. M-18235

The State of New York, having moved this Court by Notice of Motion dated February 24, 1976, with the attached affidavit of KENNETH L. SCHEER, duly sworn to the 24th day of February, 1976, requesting dismissal of the claim, and, in the alternative, dismissing various causes of action in the claim on

grounds that the claim and cause of action fails to state a cause of action against the State of New York; that the Court does not have jurisdiction over the subject matter of the claim, that the various causes of action may not be maintained because of res judicata and collateral estoppel, that defenses are found upon documentary evidence, and for an order for summary judgment in that the causes of action alleged in the claim have no merit, and for such other and further relief as to this Court may seem just and proper.

NOW, upon reading and filing the Notice of Motion dated February 24, 1976, and the attached affidavit of KENNETH L. SCHEER, duly sworn to February 24, 1976, in support of said motion, the undated affidavit of Adelyn J. Crawford in opposition thereto, and the Reply Affidavit of KENNETH L. SCHEER,

sworn to March 27, 1976, in support thereof, and the Court having heard LOUIS J. LEFKOWITZ, Attorney General, by KENNETH L. SCHEER, Assistant Attorney General, in support of said motion, and having heard JESSE ROTHMAN, ESQ. in opposition, and the Court having had due deliberation thereon, it is

ORDERED, that the motion is granted in part and denied in part, and it is further

ORDERED, that the allegations and causes of action in the claim and bill of particulars dealing with the actions of the Mamaroneck Police Department, Justice Munn Brewer, Grasslands Hospital and newspaper accounts of claimant's arrest and incarceration at Grasslands Hospital are dismissed, and it is further

ORDERED, that in all other respects the motion is denied.

DATED: April 13, 1976
Poughkeepsie, N. Y.

E N T E R :

/s/ Dorothea E. Donaldson
Judge of the Court of Claims

F I L E D
MAY 11 1976
STATE COURT OF CLAIMS
ALBANY, NEW YORK

APPENDIX B

In the Matter of an Application for the Certification of Doris Coates, an Alleged Mentally Ill Person. Doris Coates, Appellant; Guy M. Walters, as Medical Officer of Rochester State Hospital, Respondent.

Argued January 11, 1961; decided March 2, 1961.

Insane and other incompetent persons — incompetency hearing — notice — appellant's temporary commitment to institution for mentally ill without personal notice of application valid — commitment order achieves tentative finality upon filing of certificate of necessity of continued treatment — continuance of confinement beyond temporary period not unconstitutional where patient has right to complete rehearing of determination — certification order provides for disclosure of papers to parties and interested persons — patient must receive actual personal service of notice before 30-day period during which demand may be made for jury trial challenging commitment commences to run — court not compelled to imply provision that notice shall not be given — due process satisfied where commitment order and finding as to need for continued treatment are subject to review before becoming conclusive.

1. Upon the petition of appellant's husband and the medical statements of two examining physicians, appellant was certified to an institution for the mentally ill by order of a County Judge for observation and treatment for a period not exceeding 60 days. The order further provided that, if within the 60-day period a person in charge of the institution filed a certificate that continued care and treatment were required, the temporary commitment order would become final. Appellant was not personally served with notice of the original application for the commitment order since, under section 74 of the

Statement of Case

Mental Hygiene Law, notice may be dispensed with, nor did she receive notice of the filing of the certificate. Appellant petitioned for a jury trial pursuant to section 76 of the Mental Hygiene Law, which provides that a committed person may obtain a review of the final order within 30 days after the making of such order. The petition was denied as being untimely, since it was not made within 30 days after the filing of the certificate. Appellant's temporary confinement without actual personal notice to her was valid.

2. The continuance of confinement beyond the temporary period is not violative of due process or otherwise unconstitutional, since the patient has the right to a prompt and complete rehearing of the determination *ab initio* under section 76, and thus the finality of the court order is subject to the right of review.

3. The fact that a hearing is not provided for until after the certification order has become final does not invalidate the statute.

4. Appellant's contention that at the hearing she will have no means of determining what proof will be offered against her is without merit, since the order of certification provides for disclosure of the papers to parties and properly interested persons upon court order.

5. The arguments in favor of dispensing with notice of the original application for the commitment order are not applicable once the patient has been received in custody. Nothing short of actual personal service of notice upon the patient that the 30-day period in which she must make her demand for a jury trial has commenced to run will suffice to commence the running of this period of limitation.

6. No express provision is contained in section 76 that notice shall not be given to the patient, and the court is not compelled to imply such a provision, especially where such a construction might render the statute violative of due process.

7. Inasmuch as the initial temporary order of commitment is subject to the review provisions of section 76, it cannot be final if review is invoked until after a determination by the court in the section 76 proceeding. Thus appellant is in fact offered the opportunity to challenge before the court the finding as to the need for continued treatment contained in the filed certificate before that finding becomes conclusive upon her and due process is thus satisfied.

Matter of Coates, 8 A D 2d 444, affirmed.

Appeal, on constitutional grounds, from an order of the Appellate Division of the Supreme Court in the Fourth Judicial Department, entered November 27, 1959, which unanimously affirmed an order of the Supreme Court at Special Term (Charles B. Brasser, J.; opinion 14 Misc 2d 89), entered in Monroe County, ratifying and confirming an order of Monroe County Judge Clarence J. Henry, dated April 17, 1957, and denying a motion by petitioner to declare invalid and unconstitutional section 74 (subd. 7) and section 76 of the Mental Hygiene Law.

Points of Counsel

Vito J. Cassan for appellant. I. The nature of due process is such that, although it does not easily render itself to definition, the facts of this case clearly come within its general meaning. (*People ex rel. Ordway* v. *St. Saviour's Sanitarium*, 34 App. Div. 363; *People* v. *Adirondack Ry. Co.*, 160 N. Y. 225; *Stuart* v. *Palmer*, 10 Hun 23, 74 N. Y. 183; *West* v. *Louisiana*, 194 U. S. 258; *People ex rel. Morriale* v. *Branham*, 178 Misc. 728, 289 N. Y. 813, 266 App. Div. 476, 291 N. Y. 312, 292 N. Y. 127; *Douglas* v. *Jeannette*, 130 F. 2d 654, 319 U. S. 157, 319 U. S. 782.) II. Due process requires that permanent confinement, as distinguished from temporary confinement, be upon notice and hearing. The Mental Hygiene Law provides for neither proper notice nor a fair hearing. (*People ex rel. Sullivan* v. *Wendel*, 33 Misc. 496.) III. The statute in question makes no provision for notice in obtaining a final order and, according to the case law, is in violation of the due process clauses of the Federal and State Constitutions. As a corollary thereto, section 76 of the Mental Hygiene Law is likewise unconstitutional. (*People ex rel. Sullivan* v. *Wendel*, 33 Misc. 496; *People ex rel. Morriale* v. *Branham*, 178 Misc. 728, 289 N. Y. 813, 266 App. Div. 476, 291 N. Y. 312, 292 N. Y. 127; *Matter of Kenny*, 23 Misc. 9, 30 App. Div. 624; *Dohany* v. *Rogers*, 281 U. S. 362; *Matter of Atlas Lathing Corp.* v. *Bennett*, 176 Misc. 959; *Matter of Grout*, 105 App. Div. 98.) IV. Implying abstract notice does not make the statute constitutional. V. Whatever the construction of section 76 of the Mental Hygiene Law, it is unconstitutional because there is no notice or hearing before the final determination. VI. The statute in question is unconstitutional upon the further grounds that it is an encroachment by an executive officer upon the powers of the judiciary of this State. (*People ex rel. Barone* v. *Fox*, 144 App. Div. 611, 202 N. Y. 616.)

Louis J. Lefkowitz, Attorney-General (*Jean M. Coon* and *Paxton Blair* of counsel), for respondent. I. Sections 74 and 76 of the Mental Hygiene Law make adequate provision for notice to an alleged incompetent and for a hearing granted as of right. (*People ex rel. Morriale* v. *Branham*, 291 N. Y. 312, 291 N. Y. 826, 292 N. Y. 127; *Matter of Ryan*, 180 Misc. 478, 267 App. Div. 861, 292 N. Y. 715; *Wilson* v. *Standefer*, 184 U. S. 399; *Louisville & Nashville R. R. Co.* v. *Schmidt*, 177 U. S. 230; *Hurtado* v. *California*, 110 U. S. 516; *Ex Parte Wall*, 107 U. S. 265; *People*

Opinion per FROESSEL, J.

ex rel. Peabody v. *Chanler*, 133 App. Div. 159, 196 N. Y. 525; *People* v. *Dubina*, 304 Mich. 363; *Matter of Gurland* v. *Beckenstein*, 286 App. Div. 704, 309 N. Y. 969.) II. A statute, by which a final order of commitment may be made without notice or by which the court is authorized as a matter of discretion to dispense with the service of notice upon an alleged mentally ill person, is constitutional. (*Sporza* v. *German Sav. Bank*, 192 N. Y. 8; *People ex rel. Morrell* v. *Dold*, 119 App. Div. 888, 189 N. Y. 546; *Matter of Walker*, 57 App. Div. 1; *Parker* v. *Willard State Hosp.*, 50 App. Div. 622; *Matter of Egan*, 36 App. Div. 47; *Matter of Andrews*, 126 App. Div. 794; *Brayman* v. *Grant*, 130 App. Div. 272; *People ex rel. Ordway* v. *St. Saviour's Sanitarium*, 34 App. Div. 363; *People ex rel. Sullivan* v. *Wendel*, 33 Misc. 496; *Matter of Grout*, 105 App. Div. 98; *People ex rel. Barone* v. *Fox*, 202 N. Y. 616.)

FROESSEL, J. Appellant challenges the constitutionality of sections 74 and 76 of the Mental Hygiene Law, insofar as they permit the continued confinement of an alleged mentally ill person without the prior notice or hearing, which appellant maintains is required by the due process clauses of the State and Federal Constitutions.

The statutory procedure may be quickly reviewed. Section 74 provides that a person alleged to be mentally ill may be confined in an institution for the care and treatment of such persons, pursuant to a court order granted on the petition of a relative or other specified person, and accompanied by a certificate of two examining physicians, stating that such person is in need of care and treatment (§ 74, subds. 1, 2). The person alleged to be mentally ill is entitled to personal service of notice of the application for the order at least one day in advance thereof (subd. 3). However, that notice may be dispensed with in the court's discretion, and *shall* be dispensed with if the examining physicians state in writing that, in their opinion, such service would be detrimental to such allegedly ill person (*id.*). If the petition is made by the wife, husband, father, mother or nearest relative, *no notice is required to any person* even though notice to the allegedly ill person has been dispensed with (*id.*). When no application is made for a *hearing* on behalf of the allegedly ill person, provided for in subdivision 5, the Judge may, if satisfied that care and treatment are necessary, *immediately* direct

commitment for a period not exceeding 60 days for the purpose of observation and treatment (subd. 4).

Subdivision 7 of section 74 provides that at any time prior to the expiration of 60 days from the date of the commitment order —which authorized the temporary confinement— the director, physician or other person in charge of the institution to which the patient has been admitted, or a duly designated medical officer, may file a certificate in the office of the County Clerk stating, after so finding, that *continued care and treatment* are required. Thereupon, although *no notice* of the filing has been given to the court, the person confined or someone on his behalf, " the order theretofore made by the judge shall become a final order and such patient shall thereafter remain in such institution, or any other institution, to which he may be transferred, until his discharge in accordance with the provisions of this chapter " (subd. 7).

The discharge may be secured on the certificate of the director of the institution that the patient (1) has recovered; (2) is not mentally ill; or (3) while not recovered may be cared for at home, and that this would not be detrimental to the public welfare or injurious to the patient (§ 87). A discharge may also result at any time from a determination in a habeas corpus proceeding that the patient is sane at the time (§ 204) (*Matter of Gurland*, 286 App. Div. 704, 706), or as the result of a proceeding instituted under the provisions of section 76.

Section 76, the only method of discharge with which we are here concerned, provides that if the person committed, or any relative or friend in his behalf, " be dissatisfied with the final order of a judge or justice certifying him, he may, within thirty days after the making of such order, obtain a rehearing and a review of the proceedings already had and of such certification, upon a petition to a justice of the supreme court other than the justice making such certification, who shall cause a jury to be summoned * * * and shall try the question of the mental illness of the person so certified ". For a comprehensive statement of the prior statutory law on this subject, see *Sporza* v. *German Sav. Bank* (192 N. Y. 8).

Now as to the relevant facts. On April 17, 1957 appellant was certified to the Rochester State Hospital by order of a County Judge upon the petition of her husband and the brief joint medical certificate of two examining physicians. Personal service of notice of the application was dispensed with, pursuant to subdivision 3 of section 74, by reason of the following statement in the physicians' certificate: " Personal service of notice would be aggravating and detrimental to patient in her present mental state." No facts were stated in support of this conclusion, and it would appear that appellant was not personally seen by the court prior to the issuance of the order. No hearing appears to have been demanded, as provided for in subdivision 5 of section 74.

The court's order, which directed appellant's admission to the hospital " for observation and treatment for a period not exceeding 60 days ", also provided that, upon the filing of the certificate referred to in subdivision 7 of section 74, " this order shall then become final ". Its finality, however, was subject to the review procedure of section 76. This certificate, which was duly filed in the office of the Monroe County Clerk on May 2, 1957, merely stated that appellant was found to be mentally ill and in need of continued care and treatment. No facts were stated in support of the hospital authorities' conclusions. Appellant did not receive notice of the filing of this certificate. On May 13, 1957 appellant was released by the institution and placed in the care and custody of her mother, subject, however, to the requirement that she report to the institution once every month.

By petition dated June 17, 1957 appellant sought a jury trial of the question of her mental illness pursuant to the provisions of section 76. By an order entered September 11, 1957 her petition was denied as untimely—not having been made within the 30-day period commencing May 2, 1957 (when the certificate was filed). Thereafter, by notice of motion dated February 3, 1958, appellant sought to vacate the original certification order and the other proceedings on the ground that the statute under which they were conducted, made and entered is unconstitutional. By an order entered March 28, 1958 the original order and related proceedings were ratified and confirmed, and appellant's motion denied.

Both of the above orders were appealed to the Appellate Division. The order denying appellant a jury trial was reversed and the order denying the motion to vacate was affirmed. Although they were treated together in the opinion below, only the latter order is presently before us.

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The Appellate Division did not deem it necessary to pass upon appellant's contention that the statutory provisions are unconstitutional. Rather, quoting with approval from the decision of this court in *People ex rel. Morriale* v. *Branham* (291 N. Y. 312, 317), the court stated: "'Unless the statute provides expressly or by necessary implication that an adjudication may be made without notice to the person whose detention or restraint is sought, we may reasonably find implicit in the statute a direction that the judicial decision and decree shall be made only in accordance with due process of law after notice and opportunity to be heard.'" Although not expressly so stating, the Appellate Division was apparently of the opinion that the right of judicial review provided for in section 76 gave appellant sufficient opportunity to be heard on the question of her alleged mental illness. It noted, however, that a strict interpretation of that section would eliminate the patient's right of review 30 days after the filing of the certificate with the County Clerk—"a strictly ex parte act"—of which the patient may never become aware. Therefore, it was held that "Inasmuch as the institution is entitled to the full period of 60 days to observe and treat and in view of the further fact that the institution may act at any time during the period without notice of its action it is concluded that the period of 30 days within which a judicial review may be sought does not commence to run until the expiration of the 60 days from the date of the making of the commitment order."

The court "pointed out in passing" that "the institution, if it so desired, might be able to commence the running of the period of 30 days by [earlier] notice to the appropriate parties." This was not made a requirement, however, and the court did not undertake "to formulate a rule as to who the appropriate parties might be".

Appellant contends that, even under the construction placed upon the statute by the Appellate Division, the fundamental due process requirement of "actual" notice and an opportunity to be heard *prior* to the entry of the final order authorizing permanent confinement of an alleged mentally ill person is not met. Appellant also maintains that the statute is unconstitutional because permanent confinement results from the ex parte filing of a certificate by a nonjudicial officer, stating findings which the patient is given no opportunity to traverse.

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Although challenging the statutory provisions insofar as they relate to so-called *permanent* confinement, appellant "raises no question here as to the propriety of temporary restraint without notice". It is conceded that, where immediate action is necessary for the protection of society and for the welfare of the alleged mentally ill person, due process does not require notice or hearing as a condition precedent to valid temporary confinement. This is well settled (*Sporza* v. *German Sav. Bank, supra* [although subsequent notice was there given (p. 15)]; *People ex rel. Ordway* v. *St. Saviour's Sanitarium*, 34 App. Div. 363, 370; *Matter of Andrews*, 126 App. Div. 794, 799).

This court has long recognized that the exact meaning and scope of the phrase "due process of law" cannot be defined with precision (*Stuart* v. *Palmer*, 74 N. Y. 183, 191 [1878]). We there, however, stated what we consider to be the very least which would satisfy due process as follows: "due process of law requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. *A hearing or an opportunity to be heard is absolutely essential.* We cannot conceive of due process of law without this." (Emphasis supplied.) (See, also, *Matter of Lyons* v. *Goldstein*, 290 N. Y. 19, 24–25.) Due process does not, however, "guarantee to the citizen of a state any particular form or method of state procedure" (*Dohany* v. *Rogers*, 281 U. S. 362, 369). "Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard". (*Ibid.*)

Consequently, if the statute before us contained no provision affording appellant an opportunity to litigate fully the question of her mental illness and the propriety of the proceedings which led to her confinement, it would unquestionably be violative of due process. Such was the case in *People ex rel. Ordway* v. *St. Saviour's Sanitarium* (34 App. Div. 363, *supra*) which involved the commitment of an inebriate under the provisions of chapter 467 of the Laws of 1892, and upon which appellant places such great reliance. Although the court held the statute to be violative of due process because it did not provide for either notice or hearing prior to an ex parte *final* commitment of an inebriate woman, it is suggested in the opinion that the result may have been otherwise had the statute provided for an "investigation after commitment" into the legality of the con-

finement and the proceedings which led thereto (34 App. Div., *supra*, p. 374).

In the case before us, ample provision is made in section 76 for a complete rehearing and review *ab initio*. Thus the finality of the court order is *subject* to the right of review. In our opinion, this provision saves the constitutionality of section 74. Moreover, it should be noted, the alleged mentally ill person is not declared "incompetent"; she is merely hospitalized in the first instance for not more than 60 days, and her hospitalization may then be continued beyond that period only if "the person in charge of the institution * * * finds that such patient is in need of continued care and treatment".

In *Matter of Blewitt* (131 N. Y. 541) appellant sought to set aside a commission and proceedings in lunacy, and the appointment of a committee, on the ground that the alleged lunatic had no notice of the proceedings—or, in the alternative, that an issue be awarded to try the fact of lunacy. Special Term denied the relief to vacate, but made an order directing a jury trial of the issue. The order was affirmed by General Term. This court, in affirming the orders below, and noting that attempts are frequently made to get control of the person and property of another by the aid of lunacy proceedings, stated (p. 547) that "a very clear case should be made before the court should proceed in lunacy proceedings, in the absence of actual personal and written notice to the party, and that unless such a case is made by the petition or affidavits, and an order made by the court dispensing with personal notice and providing for notice to relatives or others in lieu of personal notice an adjudication in the absence of such notice should be set aside." The order below was nevertheless affirmed on the ground that appellant was permitted to "traverse not the inquisition, *but the original petition, thereby putting him in the same position as upon an original hearing thereon*", and for other reasons making it very clear that a full opportunity had been presented for appellant to litigate the question of his sanity (emphasis supplied).

Appellant contends that section 76 does not cure the defect in section 74 because the hearing it provided for is *after*, rather than before, the order of certification has become final, and that she will have no means of determining what proof will be offered against her. This contention is wholly without merit, inasmuch

as the finality of the order is subject to review under section 76. Moreover, the Supreme Court of the United States, in somewhat analogous situations, has made it clear that the provisions of an act authorizing the seizure of property without a prior judicial hearing are "rescued from constitutional invalidity" by provisions affording the claimant a subsequent judicial hearing as to the propriety of the seizure (*Societe Internationale* v. *Rogers*, 357 U. S. 197, 211; see, also, *Falbo* v. *United States*, 320 U. S. 549, 554).

This principle has been extended to commitment cases by several State courts, and ex parte commitment for an indefinite time has been upheld where the statute made adequate provision for the allegedly mentally ill person to test the legality of his confinement after his admission (*In Re Petition of Crosswell*, 28 R. I. 137; *Dowdell, Petitioner*, 169 Mass. 387; *Payne* v. *Arkebauer*, 190 Ark. 614; *In re Bryant*, 214 La. 573). Precisely such a right is given to appellant by virtue of the provisions of section 76.

Although it is true that the order of certification directs that the papers "be sealed in the office of the County Clerk", it also provides for their disclosure to "parties to the proceedings, or someone properly interested, upon the order of the Court". It is inconceivable that appellant or someone on her behalf would be denied access to these papers during the course of her preparation for the jury trial which she has demanded pursuant to section 76.

The really crucial question involved in this appeal is: Does section 76 provide for adequate notice to appellant that the 30-day period, in which she must make her demand for a jury trial, has commenced to run? Obviously, the "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest" (*Mullane* v. *Central Hanover Trust Co.*, 339 U. S. 306, 314). Furthermore, the "notice must be of such nature as reasonably to convey the required information", for, as the court stated, "when notice is a person's due, process which is a mere gesture is not due process" (339 U. S., *supra*, pp. 314–315).

As previously noted, the Appellate Division held that the 30-day period within which judicial review may be sought does

not commence to run until the expiration of 60 days from the making of the commitment order. The court did not require actual notice, nor did it suggest how the confined person would ever become aware that his time to demand a jury trial had commenced to run. To imply such notice from the mere provisions of the statute by virtue of the presumption that the confined person knows the law is, in our judgment, highly unrealistic. Moreover, we believe that such implied or constructive "notice" falls short of even the "mere gesture" which was held to be insufficient in the *Mullane* case (*supra*).

Nothing short of *actual* personal service of notice upon the allegedly ill person can suffice to commence the running of the 30-day period (see *People ex rel. Sullivan* v. *Wendel*, 33 Misc. 496, 498). The arguments advanced in favor of dispensing with notice of the original application for the *commitment* order lose their vitality once the patient has been received in custody by the hospital authorities. Surely the experience of receiving notice that a possible means of *release* is available can hardly aggravate the condition of a person presently restrained of her liberty against her will. Moreover, once in confinement the patient can no longer be considered a danger to society, to herself or others for she will be under the care, observation and watchful eyes of the hospital staff.

Although section 76 does not expressly provide for such notice, we find precedent for construing the statute so as to provide therefor in *People ex rel. Morriale* v. *Branham* (291 N. Y. 312, *supra*). In that case, appellant was retained in confinement after the expiration of his prison term by reason of an order adjudging him to be a mental defective, entered pursuant to the provisions of section 440 of the Correction Law. Appellant had been given no notice of the application for such an order, and had no opportunity to challenge the ex parte assertion that he was a mental defective. Chief Judge LEHMAN noted that the statute, which did not require that notice of the application be given to the prisoner, may well be unconstitutional. Therefore, speaking for a unanimous court, he stated (291 N. Y., *supra*, p. 317): "[Such a statute] must if possible be given a construction which will not offend constitutional guarantees of liberty or offend fundamental concepts of the common law. *Unless the statute provides expressly or by necessary implication that an*

adjudication may be made without notice to the person whose detention or restraint is sought, we may reasonably find implicit in the statute a direction that the judicial decision and decree shall be made only in accordance with due process of law after notice and opportunity to be heard." (Emphasis supplied.) (See, also, *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 50; *Matter of Hecht* v. *Monaghan*, 307 N. Y. 461, 468.)

No express provision is contained in section 76 that notice *shall not* be given to the patient, and we are not compelled to imply such provision, especially when such a construction might well render the statute violative of due process. This is in accord with the well-settled principle of statutory construction that "statutes must be construed to avoid not only the conclusion that they are unconstitutional, but also to avoid any grave doubts upon that score" (McKinney's Cons. Laws of N. Y., Book 1, Statutes, § 150, p. 237, n. 97, and cases cited therein; *Matter of New York Post Corp.* v. *Leibowitz*, 2 N Y 2d 677, 687; *People* v. *Barber*, 289 N. Y. 378, 385).

In *Chaloner* v. *Sherman* (242 U. S. 455) it was held that the omission of the New York statutes to provide expressly for notice of and opportunity to be heard at an inquisition held in the course of proceedings *de lunatico inquirendo* was not violative of due process. The court found that the requisite notice and opportunity to be heard were required by the decisions of this court, and, therefore, were "required by the law of New York though not expressly recited in the statute" (242 U. S., *supra*, p. 460).

Appellant's final contention is that the statute before us is unconstitutional because the continued confinement after the expiration of the 60-day period provided for in the original commitment order results from the ex parte filing of a certificate by a nonjudicial officer, whose findings are not traversable by the alleged mentally ill person. Of course they are traversable under section 76. Moreover, the maker of the certificate is not purporting to exercise the office of a Judge, but the Judge has in effect made the person named in the statute his agent to observe the patient and treat him if necessary, and if, on the basis of such observation and treatment, the patient requires further care (that is, more than 60 days), the Judge requires merely that the person named in the statute file his certificate in the

County Clerk's office. Furthermore, the initial order itself provided for its becoming a final order (although subject to review) upon the filing of the certificate within 60 days. Thus at least tentative finality resulted from an order made by a judicial officer and not from the mere fact that a certificate was filed and, if a review is demanded, the findings of the medical officer may be challenged, whereupon an additional order will be made by the court.

Appellant's reliance upon *People ex rel. Barone* v. *Fox* (202 N. Y. 616, revg. upon dissenting opinion of CLARKE, J., 144 App. Div. 611, 621) and *Matter of Kenny* (23 Misc. 9, affd. 30 App. Div. 624) is misplaced. In neither of those cases did the statutes involved contain a provision similar to section 76, whereby the person confined might challenge the correctness of the ex parte finding made by the nonjudicial officer. It is significant to note that the very statute which was held unconstitutional in *Matter of Kenny* (*supra*), after being amended to provide for notice and an opportunity to be heard in opposition to the ex parte factual finding, was upheld (see *People ex rel. Abrams* v. *Fox*, 77 App. Div. 245).

For the reasons heretofore stated, we conclude as follows:

(1) Appellant's temporary confinement without actual personal notice to her was valid, and this is conceded.

(2) The continuance of confinement beyond the temporary period, under subdivision 7 of section 74, where the person in charge of the institution "finds that such patient is in need of continued care and treatment" is not subject to successful constitutional challenge as violative of due process or otherwise, so long as the patient has the right to a prompt and complete hearing or review of the determination *ab initio*.

(3) Her continued confinement may be challenged immediately after the filing of the certificate under subdivision 7 of section 74, but the 30-day period of limitation withdrawing that right may not begin until notice of the filing has been given her. As to this appellant, the 30-day period has not begun to run.

(4) Inasmuch as the initial order is subject to the provisions of section 76, it cannot be final where review is invoked until after a determination by the court in the section 76 proceeding. Thus appellant is in fact offered the opportunity to challenge, before the court, the finding as to the need for continued treatment before that finding becomes conclusive upon her, and due process is thus satisfied.

(5) We do not agree with the Appellate Division that after 90 days the patient is forever barred. This holding, in our view, would render the statute unconstitutional.

Accordingly, the order appealed from should be affirmed, without costs.

Chief Judge DESMOND and Judges DYE, FULD, VAN VOORHIS, BURKE and FOSTER concur.

Order affirmed.

APPENDIX C

§ 76. Review of proceedings and order of certification

If a person certified to an institution, pursuant to this chapter, or any relative or friend in his behalf, be dissatisfied with the final order of a judge or justice certifying him, he may, within thirty days after the making of such order, obtain a rehearing and a review of the proceedings already had and of such certification, upon a petition to a justice of the supreme court other than the justice making such certification, who shall cause a jury to be summoned as in the case of proceedings for the appointment of a committee for mentally ill person where the question of fact arising upon the competency of the person is tried by a jury, and shall try the question of the mental illness of the person so certified in the same manner as provided in said proceedings. If such petition for rehearing and review be made by any other than the person so certified or the father, mother, husband, wife or child of such person or the person with whom the person certified was residing at the time of such certification or accustomed to reside, before such rehearing or review shall be had, the petitioner shall make a deposit or give a bond, to be approved by a justice of the supreme court, for the payment of the costs and expenses of such rehearing, review and determination of the question of mental illness by a jury as aforesaid, if the order of certification is sustained. If the verdict of the jury be that such person is sane, the justice shall forthwith discharge him, but if the verdict of the jury be that such person is mentally ill, the justice shall certify that fact and make an order of recertification as upon the original hearing. Such order shall be presented, at the time of the recertification of such ~~mentally ill person, to, and~~ filed with, the director or person in charge of the institution to which the mentally ill person is certified and a copy thereof shall be forwarded to the department by such director or person in charge and filed in the office thereof. Proceedings under the order shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged mentally ill person as may be deemed necessary. If a judge or justice shall refuse to grant an application for an order of certification of a mentally ill person proved to be dangerous to himself or others, if at large, he shall state his reasons for such refusal in writing, and any person aggrieved thereby may obtain a rehearing and review and the determination of the question of mental illness by a jury in the same manner and under like conditions as from an order of certification. Formerly § 73, renumbered 76, L.1933, c. 395, § 4; amended L.1944, c. 666, § 33, eff. Oct. 1, 1944.

APPENDIX D

COURT OF CLAIMS : STATE OF NEW YORK

ADELYN J. CRAWFORD,

Claimant-Appellant,

- against -

THE STATE OF NEW YORK,

Defendant-Respondent.

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice of hereby given that ADELYN J. CRAWFORD, the claimant-appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Court of Appeals of the State of New York dated June 14, 1979 and entered in this action.

This appeal is taken pursuant to United States Code Title 28, Section 1257(2).

Dated: August 17, 1979
Great Neck, New York

Yours, etc.,

/s/ Leonard Kreinces

LEONARD KREINCES
GARNER & KREINCES
Attorneys for Claimant-Appellant,
Office & P. O. Address,
107 Northern Boulevard
Great Neck, New York 11021
(516) 482-5330

TO: HON. ROBERT ABRAMS
Attorney-General of the
State of New York
Attorney for Defendant-
Respondent,
The Capitol,
Albany, New York 12224

CLERK OF THE COURT OF CLAIMS
Justice Building
South Mall
Albany, New York 12223

STATE OF NEW YORK : COURT OF CLAIMS

ADELYN J. CRAWFORD,

Claimant,

-against-

THE STATE OF NEW YORK,

Defendant.

VERIFIED CLAIM

Motion No.
M-15984

The above named claimant, ADELYN J. CRAWFORD, for her verified claim and causes of action against the State of New York, by her attorneys, Gregoire & Sargent, respectfully alleges:

1. The claimant herein resides at 33 Graham Road, Scarsdale, New York 10583. Notice of intention to file this claim was served by mail on the office of the Clerk of the Court of Claims and on the Attorney General on the 27th day of November 1973.

2. This is a claim for damages

sustained by the claimant: by reason of the false imprisonment and illegal detention of claimant at Grasslands State Hospital from March 22, 1955 to April 7, 1955 and at Harlem Valley State Hospital from April 7, 1955 to January 23, 1973; by reason of the negligence of the State of New York doctors and others in failing to use ordinary care and prudence in giving the claimant psychiatric examinations; by reason of the cruel and inhuman treatment and mental anguish and physical suffering and the humiliations inflicted upon the claimant by the doctors, attendants and the personnel employed by said hospital; by reason of the fact that the personnel (attendants and doctors) of said hospital neglected to protect the claimant from mistreatments and humiliations by inmates and patients in said hospital; by reason of the fact that property belonging to the claimant was

unlawfully appropriated by attendants and patients of the said hospital; by reason of the negligence on the part of the defendant's Attorney General and Assistant Attorneys General in failing to use ordinary care and prudence in neglecting to investigate the facts brought to their attention by the claimant; by reason of wilfully and wrongfully appropriating claimant's property in the approximate amount of $20,000 while ignoring claimant's demands that her property was not to be touched, and subsequently her demands for information concerning her property; for wilfully and wrongfully ignoring claimant's demands to use part of her property to provide her with much needed petty cash funds while unlawfully incarcerated in Harlem Valley State Hospital; for wilfully and wrongfully ignoring her demands regarding her Social Security benefits to which

she was entitled; by reason of the fact that claimant was prevented by the personnel of said hospital from attending to her financial affairs and investments and thus suffered severe material loss.

FOR A FIRST CAUSE OF ACTION

3. On or about March 22, 1955 claimant was brought to Grasslands State Hospital in Valhalla, New York, and remained there for about two weeks until April 7, 1955, on which day she was forcibly transferred to Harlem Valley State Hospital, a mental institution at Wingdale, New York. Claimant was never brought to any court or arraigned for any criminal charge or given any hearing on any such charge.

4. The Director of said institution received, accepted and admitted claimant to said hospital on said date and kept her forcibly confined therein, allegedly subject to the rules and regu-

lations of the said institution.

5. At all times hereinafter mentioned, Harlem Valley State Hospital was and still is a mental institution, owned, operated, controlled, and managed by the State of New York.

6. At all the times hereinafter mentioned, the Director of Harlem Valley State Hospital and all the agents, attendants and employees of the defendant at said hospital, who received, retained and detained the claimant herein and held her against her will and who refused to release claimant therefrom, were officers, agents, servants and employees of the defendant and were acting in the course of their duties and within the scope of their employment and in the furtherance of the affairs of the defendant in all regards and in all things connected with the matters herein alleged.

7. Neither at the time of

claimant's arrival at Harlem Valley State Hospital on or about April 7, 1955, nor at any time prior or subsequent thereto, were any charges filed against claimant in any court of the State of New York alleging violation of any law, criminal or otherwise.

8. The Director of Harlem Valley State Hospital and his employees made no effort to check or investigate the circumstances leading to claimant's commitment to that institution, and continued to wrongfully and illegally hold her therein until she was released on January 23, 1973. Claimant's constant and almost weekly written demands for freedom were wilfully and wrongfully ignored.

9. On several occasions during the almost eighteen years of her detention whenever the claimant demanded to bring habeas corpus proceedings in order to regain her freedom and requested from the

Director of said hospital a copy of the commitment order and other papers brought to said administrator or other persons in said hospital on the receipt of the claimant, for production in such intended habeas corpus proceedings to the Justice presiding thereat, said demands were intentionally and wrongfully ignored. Upon information and belief the attitude taken by said administrator or others was due to the fact that when claimant was questioned by a psychiatrist of the said institution, she admitted that she intended to bring legal action in court for unlawful detention as soon as she was released from said hospital and at liberty to do so. It was only in fact 1969 that a hearing was held before a Judge of the Supreme Court, Westchester County, the results of which were never disclosed to claimant.

10. During the aforesaid

detention of claimant at Harlem Valley State Hospital the officials thereof kept claimant incommunicado therein, refused to allow her to mail or receive letters and to receive visits of family or friends except for two brief periods of time; letters containing legal information as well as personal messages to friends and to her daughter Nancy which were remitted for mailing through Harlem Valley State Hospital office were in fact never mailed. Claimant was deprived of the right to continue to establish a home for her daughter, who was 12 years old in 1955, to guide her into adulthood, to plan her future and to seek happiness being together with her.

11. Claimant was not permitted to walk outside the institutional buildings for 16½ years. She was confined to one room and a dormitory for the same length of time. She went to the dining

room with the other patients and was fed extremely unpalatable meals.

12. In or about May 1967 one attendant by the name of Kimball and another attendant whose name claimant does not recall, dragged her bodily along the floor, partially down one flight of stairs, and forced her to go down to the courtyard and to sit with a group of demented persons on hard benches; the courtyard was infested with mosquitos.

13. On or about October 1967, an attendant by the name of Connors manhandled the claimant and forced her to do calisthenics in a gym despite the fact that she was then suffering from skull pressure and churning restlessness, which claimant believes were caused by abusive administration of mind drugs.

14. Without provocation by claimant, claimant was constantly subject to harrassment and indignities by employ-

ees as well as inmates. To cite only one instance: on or about 1961 a Spanish inmate by the name of Valdez approached claimant at the basins in the water section and deliberately shoved her aside and swung at her. Claimant immediately ran for the attendant, Mrs. Garay. Around that time too Valez repeatedly followed claimant into the toilet section, sat down in the stall next to her and continually pounded on the partition between the toilet stalls (no doors then). At intervals other patients went berserk and claimant would run for dear life. During the night, various inmates sometimes raved and ranted for hours and walked through the dorm, stealing things from the others in bed.

15. Around 1969 one Elizabeth Lang constantly harrassed claimant and once poured part of a glass of water down her back. Attendants Garay and

Middleton from 1958 through 1969, attendant Kimball from 1964 to 1971 and attendant Goodell from 1962 through 1968, and certain others for brief periods of time, without provocation derived vicarious pleasure in deliberately downgrading and humiliating claimant and treating her like a totally incompetent child. Around 1968, one time claimant was on the toilet and could not come for the count. Attendant Middleton and another attendant came in and picked her up bodily from the toilet, pants down, and hoisted her in for the count.

16. Claimant thus suffered extreme mental anguish, seeing the best years of her life and happiness, and life with her daughter, wilfully destroyed for no justifiable reason.

17. By reason of the aforesaid, claimant suffered and claims damages on the aforesaid first cause of

action in the amount of five hundred thousand dollars ($500,000).

FOR A SECOND CAUSE OF ACTION

18. The claimant repeats and reiterates each and every of the allegations contained in the paragraphs of this claim set forth in paragraphs 3 through 16.

19. During the entire period of the claimant's confinement at Harlem Valley State Hospital, the State doctors on the staff thereof failed and neglected to use ordinary care and prudence and the generally accepted standards in diagnosing the claimant's mental condition and competency; they failed to heed the complaints, observations and remonstrances of the claimant; they failed to investigate or act upon her statements to them; they negligently, improperly and unskillfully diagnosed the claimant as mentally ill and incompetent, and made reports to

the same effect which were medically defective, deficient and inadequate.

20. During the period of claimant's confinement to said hospital, the said doctors departed from proper standards, commonly used in the psychiatric field, by carelessly and negligently accepting the report on claimant's mental condition which they had received from Grasslands State Hospital, Valhalla, New York, without making any independent investigation of their own.

21. The aforementioned State doctors wrongly diagnosed or declared the claimant as being mentally ill, and for sixteen years forbade her to confer with counsel of her choice.

22. During the period of claimant's confinement in said Grasslands State Hospital and Harlem Valley State Hospital, the claimant was in truth and in fact of sound mind, rational, mentally

competent andrespectable in every sense, and completely capable of understanding her condition and her rights, and of conferring with counsel.

23. The defendant, through its employees on the staff of Harlem Valley State Hospital wrongfully and negligently failed to conduct regular or indeed any kind of treatment or to take periodic comprehensive examinations of the claimant to determine claimant's competency, and failed to report the same to higher authority, except that - at intervals of time and for no justifiable reason or provocation - various kinds of mind drugs were arbitrarily forced upon the claimant, with invariably drastic physical effects.

24. By reason of the aforesaid Second Cause of Action, the claimant sustained and claims damages in the sum of five hundred thousand dollars ($500,000).

FOR A THIRD CAUSE OF ACTION

25. Claimant repeats and reiterates the paragraphs hereinabove mentioned in the first cause of action of this claim set forth in paragraphs 3 through 16 and in the second cause of action set forth in paragraphs 18 through 23.

26. The defendant's Attorney General or Assistant Attorney General were neglectful in their professional duties, as Attorneys at Law, and attorneys for the said hospital, to investigate and verify the facts bearing out the claimant's contention and statements to the doctors on the staff of said hospital, and they, furthermore, were negligent and careless in opposing claimant's several efforts and attempts to secure her release from her detention in said hospital.

27. In November 1966 Dr.

Bittle promised claimant that she would be free shortly after Christmas 1966 and asked her to make reservations and other plans for leaving. Claimant also went to work for the Recreation Department at that time and made reservations by letters, which the said institution then permitted to be mailed, at the Martha Washington Hotel in Manhattan. Claimant also wrote to Richard Nadelman, Esq. concerning her funds and Mr. Nadelman replied, requesting that claimant visit him as soon as she was released from the institution. In January 1967 claimant wrote to Dr. Bittle that in accordance with his suggestions she had made all the necessary plans to leave the institution and that all that was needed was an exact date from Dr. Bittle. The latter never replied and simply ignored claimant's letter and arbitrarily broke his promise to free her. Claimant was also informed that

her brief two months' privilege to walk outside the institutional buildings was cancelled or discontinued and around the same time, i.e. early in 1967, degrading treatment was again resumed and intensified by attendants within the institution and another period of drug medication was forced upon claimant without apparent reason or provocation and contrary to her will.

28. By reason of the aforesaid, the claimant has suffered and claims damages on the aforesaid Third Cause of Action in the sum of five hundred thousand dollars ($500,000).

FOR A FOURTH CAUSE OF ACTION

29. Claimant repeats and reiterates each and every of the allegations contained in paragraphs hereinbefore set forth numbered 3 through 16, 18 through 23, 26 and 27.

30. In the course of the year

1958 the administration of Harlem Valley State Hospital permitted claimant to take a six month subscription to Standard & Poor's "The Outlook", an investment advisory guide, and after intensive study of the stock market conditions, claimant drew her own investment portfolio, planning to implement it as soon as she would be free and able to do so. Claimant in previous years had invested in the stock market through reputable New York brokerage firms. In the course of the year 1959 during one of the periodic raids that were made by attendants of the said hospital on the trinket closets containing patients' belongings, attendant Oakes (Mrs. Stout) deliberately appropriated and destroyed claimant's investment portfolio. When confronted with that fact, attendant Oakes replied, "I threw it into the rubbish can. The doctor wants no more of that for you,

young lady" and shook her finger at claimant as if she were talking to a child. In 1959, or any time soon thereafter, if claimant had been free to pursue her business career and implement her investment portfolio, she would have profited considerably because most of the stocks contained in her portfolio soared in value through subsequent years.

31. Upon information and belief, claimant's property in the approximate value of $20,000 was confiscated in violation of her legal statements made at the outset of her detention; and thereafter, at Harlem Valley State Hospital she demanded that her property was not to be touched; her statements were simply ignored. The interest accrued on said $20,000.00 since 1959 would amount to approximately $8,000.00.

32. On or about Christmas 1960 an attendant by the name of Beatrice

Middleton stole a five pound ham out of the refrigerator in the diet kitchen which was a gift to the claimant by Dr. McGuire of the Larchmont Avenue Church. On or about July 1968 the same attendant appropriated for herself various pieces of underwear and trinkets belonging to the claimant which had been a gift to her. The said attendant admitted these thefts, but nothing was done about it.

33. By reason thereof the claimant has suffered and claims damages on the aforesaid Fourth Cause of Action in the sum of one hundred thousand dollars ($100,000).

34. Notice of intention to file this claim is being duly filed with the Clerk of the Court of Claims of the State of New York together with this claim, and with the office of the Attorney General of the State of New York on the 26th day of November 1973.

35. This claim is filed within two years after claimant's legal disability was removed and claimant was discharged and released from Harlem Valley State Hospital.

WHEREFORE, claimant demands judgment against the defendant, the State of New York, for the total sum of one million six hundred thousand dollars ($1,600,000) as set forth in the four causes of action hereinabove, together with the costs and disbursements of this action.

GREGOIRE & SARGENT
Attorneys for Claimant
200 Park Avenue
New York, N. Y. 10017

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ADELYN J. CRAWFORD, being duly sworn, deposes and says that deponent is the claimant in the within action; that deponent has read the foregoing Claim

and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters deponent believes it to be true.

/s/ Adelyn J. Crawford

Sworn to before me this
26th day of December 1973

/s/ Murray Sargent, Jr.
MURRAY SARGENT, JR.
Notary Public, State of New York
No. 31-8765785
Qualified in New York County
Commission Expires March 30, 1974

Respondent's Position on Appeal

Respondent State of New York feels that claimant's brief to this Court contains only conclusory statements; that there are no factual or definite allegations of misfeasance and/or malfeasance on the part of the State to which the State can now respond. For instance, the first ten pages of claimant's brief to this Court contain only a brief recitation of the facts (Cl. Br. to this Court, pp. 2-4) and a recitation of the statutes involved herein (Cl. Br. to this Court, pp. 5-10). Claimant's brief to this Court then makes the following statement (Cl. Br. to this Court, p. 11):

> "Her constitutional rights were ignored. The statutory procedure for review was ignored. In fact, the entire spirit of the Mental Hygiene Law was ignored. The 'climate and attitudes' rationalization is inapposite. The Appellate Division erred in relying upon the fact that Mental Hygiene Law did not require periodic review

> of orders of retention of a patient in a mental facility. It is the initial jurisdiction of the person of appellant which was invalidly exercised. The statute in 1955 intended protection for ADELYN CRAWFORD, however, she received none of it."

There is not a single specific statement or allegation anywhere in the brief as to how claimant's rights were ignored, only the above conclusion that they were ignored. Claimant does not say how "the initial jurisdiction of the person of appellant" was invalidly exercised, only that it was. Claimant then uses the remainder of her 35 page brief to discuss Matter of Coates, 9 N Y 2d 242, 213 N.Y.S. 2d 74, 17 N.E. 2d 797, appeal dismissed 82 S.Ct. 147, 368 U.S. 34, 7 L.Ed. 2d 91. A discussion of Coates is necessary.

It is important to remember that Matter of Coates (supra) was not a claim for damages. It was a procedure used by Coates to test the validity of

her hospitalization by the State for mental illness. Coates was seeking release from the restraints placed upon her by the State for her illness. The instant case is a suit for damages. The right to release from the State hospital and the right to damages are two definite and distinct rights and even if under Coates claimant had a right to release, we could not infer from that a civil right to damages (see Dennison v. State, 28 A D 2d 608, affd. 23 N Y 2d 996, motion to amend remittitur 25 N Y 2d 904 [1969] cert. den. 397 U.S. 923 [1970]).

Coates was hospitalized for mental illness in a manner very similar to the hospitalization of claimant herein. Like the claimant herein, personal service on Coates of any and all of the papers, including the notice of application for her hospitalization, was dispensed with because "personal service of

notice would be aggravating and detrimental to patient in her present mental state" (Matter of Coates, supra, p. 247). No facts were given in Coates in support of this conclusion. Coates was never, at any time, served with any papers whatsoever on this matter. Subsequently, Coates was released in the care and custody of her mother, subject to the requirement that she report to the institution periodically. Coates then brought an action testing the constitutionality of her original commitment and in the alternative asking for a hearing pursuant to section 76 of the Mental Hygiene Law. Section 76 contains a 30-day time limitation for such a hearing which starts to run from the time of the original order of commitment. When Coates brought the action, that 30-day time limitation had long since passed. The Court held that the commitment of Coates was constitutional,

that sections 74 and 76 of the Mental Hygiene Law, the sections under which both Coates and appellant herein were hospitalized, were constitutional, but that the 30-day time limitation did not start to run against Coates until actual service of the order of commitment had been made. Since she had never been served, the time had not started to run.

Claimant in her brief to this Court (p. 15) then makes the following statement:

> "Judge Froessel viewed the statute, on its face, as being violative of due process because a hearing or an opportunity to be heard is essential to achieving a constitutionally permissible objective."

That statement would indicate that the Coates decision held that Coates' detention and the statutes upon which it was based were unconstitutional. Such is not the case. Coates held both the statutes constitutional and Coates' commitment

under those statutes, a commitment nearly identical to the instant situation, to be constitutional.

Claimant's final conclusion in her brief to this Court is stated on page 28 of her brief to this Court as follows:

> "By not directing personal service upon ADELYN CRAWFORD and thereafter depriving her of an opportunity to be heard, all jurisdictional control of the appellant ceased."

Again, Coates, supra, held just the opposite. The holding of Coates is that the commitment was constitutional in all respects but that the 30-day time limitation during which the person actually committed may test her commitment does not start to run until that person is actually served. Coates was never actually served and, therefore, her time did not start to run. In the instant case, claimant was never actually served so that theoretically the time to test her

original commitment has not started to run. But the fact is in the instant case claimant has never attempted to test her original commitment and one would suspect that she, by now, has had actual notice of that order of commitment. Although Coates is not cited in either of the decisions below, it clearly upholds the position taken by the Appellate Division, Third Department, in dismissing the instant claim.

As stated previously, it is the State's position that claimant's brief to this Court contains only general factual conclusions and no specific facts or allegations to which the State can respond. The State's main reliance, then, will be on the points presented below and which the State feels were and are important in reaching a decision in the instant situation.

At a Term of the Court of Special Sessions held in and for the Town of Mamaroneck, the 22 day of March 1955

Present:

Hon. Munn Brewer

Justice of the Peace, Town of Mamaroneck

THE PEOPLE OF THE STATE OF NEW YORK

against

ADELYN CRAWFORD

Defendant

The defendant, Adelyn Crawford, having been arrested on the charges of malicious mischief and forcible entry and now being held in the custody of the Police Department of the Town of Mamaroneck, and it

Appearing to the Court that there are reasonable grounds for believing that the said defendant is in such a state of idiocy, disability or insanity that she is incapable of understanding

the charge or proceeding or of making her defense, now therefore it is

ORDERED, that the said Adelyn Crawford be committed to the Psychiatric Institute of Grasslands Hospital in the County of Westchester for the purposes hereinafter mentioned, and it is further

ORDERED, that the said defendant be formally examined in accordance with the provisions of Title IV-A of the Code of Criminal Procedure to determine the question of sanity, and it is further

ORDERED, that the Director of the said Grasslands Hospital conduct an examination of such defendant to be made accordingly for such purpose, designating from the staff of the Psychiatric Institution of said Hospital two qualified psychiatrists who shall take the prescribed oath before proceeding with their examination, and it is further

ORDERED, that upon the comple-

tion of such examination a report be made to and filed with the aforesaid Director in the form and manner required by law together with the proscribed oath of each of the said psychiatrists, and it is further

ORDERED, that upon the filing of the aforesaid report and oaths, the Director of Grasslands Hospital take all the necessary steps and proceed in the form and manner as required by law.

Enter,

/s/ Munn Brewer
Justice of the Peace
Town of Mamaroneck, N.Y.

The present statute, enacted in 1972, is 31.35, "Review of Court Authorization to Retain an Involuntary Patient."

The titles of the section throughout the years are apochryphal. They evince a legislative intention to specifically safeguard the rights of persons alleged to be mentally ill. Because that is all we have in the case of ADELYN CRAWFORD -- an allegation of mental illness. Her constitutional rights were ignored. The statutory procedure for review was ignored. In fact, the entire spirit of the Mental Hygiene Law was ignored. The "climate and attitudes" rationalization is inapposite. The Appellate Division erred in relying upon the fact that Mental Hygiene Law did not require periodic review of orders of retention of a patient in a mental facility. It is the initial jurisdiction of

the person of appellant which was invalidly exercised. The statute in 1955 intended protection for ADELYN CRAWFORD, however, she received none of it.

A superb discussion of the basis of appellant's contentions is found in Matter of Coates, 9 N.Y.2d 242, 213 N.Y.S.2d 74, 17 N.E.2d 797, appeal dismissed 82 S.Ct. 147, 368 U.S. 34, 7 L.Ed. 2d 91. Judge Froessel, speaking for a unanimous court, began his opinion:

> "Appellant challenges the constitutionality of sections 74 and 76 of the Mental Hygiene Law, insofar as they permit the continued confinement of an alleged mentally ill person without the prior notice or hearing, which appellant maintains is required by the due process clauses of the State and Federal Constitutions. Const. art. 1, § 6; U.S. Const. Amend. 14."

The statutory scheme was then reviewed:

> "The statutory procedure may be quickly reviewed. Section 74 provides that a person

> alleged to be mentally ill may be confined in an institution for the care and treatment of such persons, pursuant to a court order granted on the petition of a relative or other specified person, and accompanied by a certificate of two ex amining physicians, stating that such person is in need of care and treatment (§ 74, subds. 1,2). The person alleged to be mentally ill is entitled to personal service of notice of the application for the order at least one day in advance thereof (subd. 3). However, that notice may be dispensed with in the court's discretion, and shall be dispensed with if the examining physicians state in writing that, in their opinion, such service would be detrimental to such allegedly ill person (id.). If the petition is made by the wife, husband, father, mother or nearest relative, no notice is required to any person even though notice to the allegedly ill person has been dispensed with (id.). When no application is made for a hearing on behalf of the allegedly ill person, provided for in subdivision 5, the Judge may, if satisfied that care and treatment are necessary, immediately direct commitment for a period not exceeding 60 days for the purpose of observation and treatment (subd. 4).
>
> "Subdivision 7 of section

74 provides that at any time prior to the expiration of 60 days from the date of commitment order -- which authorized the temporary confinement -- the director, physician or other person in charge of the institution to which the patient has been admitted, or a duly designated medical officer, may file a certificate in the office of the County Clerk stating, after so finding, that continued care and treatment are required. Thereupon, although no notice of the filing has been given to the court, the person confined or someone on his behalf, 'the order theretofore made by the judge shall become a final order and such patient shall thereafter remain in such institution, or any other institution to which he may be transferred, until his discharge in accordance with the provisions of this chapter' (subd. 7)."

The release of an alleged mentally ill person was then reviewed:

> "The discharge may be secured on the certificate of the director of the institution that the patient (1) has recovered; (2) is not mentally ill; or (3) while not recovered may be cared for at home, and that this would not be detrimental to the public welfare or injurious to the patient (§ 87). A

> discharge may also result at any time from a determination in a habeas corpus proceeding that the patient is sane at the time (§ 204) (Matter of Gurland, 286 App. Div. 704, 706, 146 N.Y.S.2d 830, 832), or as the result of a proceeding instituted under the provisions of section 76." (emphasis supplied).

Section 76 of 1955, was discussed:

> "Section 76, the only method of discharge with which we are here concerned, provides that if the person committed, or any relative or friend in his behalf, 'be dissatisfied with the final order of a judge or justice certifying him, he may, within thirty days after the making of such order, obtain a rehearing and a review of the proceedings already had and of such certification, upon a petition to a justice of the supreme court other than the justice making such certification, who shall cause a jury to be summoned * * * and shall try the question of the mental illness of the person so certified'."

The facts of Coates were briefly presented and are so similar to the appeal sub judice as to be alarming:

"On April 17, 1957 appellant was certified to the Rochester State Hospital by order of a County Judge upon the petition of her husband and the brief joint medical certificate of two examining physicians. Personal service of notice of the application was dispensed with, pursuant to subdivision 3 of section 74, by reason of the following statement in the physicians' certificate: 'Personal service of notice would be aggravating and detrimental to patient in her present mental state.' No facts were stated in support of this conclusion, and it would appear that appellant was not personally seen by the court prior to the issuance of the order. No hearing appears to have been demanded, as provided for in subdivision 5 of section 74.

"The court's order, which directed appellant's admission to the hospital 'for observation and treatment for a period not exceeding 60 days', also provided that, upon the filing of the certificate referred to in subdivision 7 of section 74, 'this order shall then become final'. This certificate, which was duly filed in the office of the Monroe County Clerk on May 2, 1957, merely stated that appellant was found to be mentally ill and in need of continued care and treatment.

No facts were stated in support of the hospital authorities' conclusions. Appellant did not receive notice of the filing of this certificate. On May 13, 1957 appellant was released by the institution and placed in the care and custody of her mother, subject, however, to the requirement that she report to the institution once every month.

"By petition dated June 17, 1957 appellant sought a jury trial of the question of her mental illness pursuant to the provisions of section 76. By an order entered September 11, 1957 her petition was denied as untimely -- not having been made within the 30-day period commencing May 2, 1957 (when the certificate was filed). Thereafter, by notice of motion dated February 3, 1958, appellant sought to vacate the original certificate order and the other proceedings on the ground that the statute under which they were conducted, made and entered is unconstitutional. By an order entered March 28, 1958 the original order and related proceedings were ratified and confirmed, and appellant's motion denied."

The contentions of appellant in Coates were:

"Appellant contends that,

even under the construction placed upon the statute by the Appellate Division, the fundamental due process requirement of 'actual' notice and an opportunity to be heard prior to the entry of the final order authorizing permanent confinement of an alleged mentally ill person is not met. Appellant also maintains that the statute is unconstitutional because permanent confinement results from the ex parte filing of a certificate by a nonjudicial officer, stating findings which the patient is given no opportunity to traverse."

Judge Froessel viewed the statute, on its face, as being violative of due process because a hearing or an opportunity to be heard is essential to achieving a constitutionally permissible objective. Therefore:

> "Consequently, if the statute before us contained no provision affording appellant an opportunity to litigate fully the question of her mental illness and the propriety of the proceedings which led to her confinement, it would unquestionably be violative of due process. Such was the case in People ex rel. Ordway v. St. Saviour's Sanitarium, 34 App.

Div. 363, 56 N.Y.S. 431, supra, which involved the commitment of an inebriate under the provisions of chapter 467 of the Laws of 1892, and upon which appellant places such great reliance. Although the court held the statute to be violative of due process because it did not provide for either notice or hearing prior to an ex parte final commitment of an inebriate woman, it is suggested in the opinion that the result may have been otherwise had the statute provided for an 'investigation after commitment' into the legality of the confinement and the proceedings which led thereto (34 App.Div. at page 374, 56 N.Y.S. at page 439, supra)."

However, Section 76 provides the saving link in the statutory scheme:

> "In the case before us, ample provision is made in section 76 for a complete rehearing and review ab initio. Thus the finality of the court order is subject to the right of review. In our opinion, this provision saves the constitutionality of section 74. Moreover, it should be noted, the alleged mentally ill person is not declared 'incompetent'; she is merely hospitalized in the first instance for not more than 60 days, and her hospitalization may then be continued

beyond that period only if 'the person in charge of the institution * * * finds that such patient is in need of continued care and treatment'.

"In Matter of Blewitt, 131 N.Y. 541, 30 N.E. 587, appellant sought to set aside a commission and proceedings in lunacy, and the appointment of a committee, on the ground that the alleged lunatic had no notice of the proceedings--or, in the alternative, that an issue be awarded to try the fact of lunacy. Special Term denied the relief to vacate, but made an order directing a jury trial of the issue. The order was affirmed by General Term. This court, in affirming the orders below, and noting that attempts are frequently made to get control of the person and property of another by the aid of lunacy proceedings, stated (131 N.Y. at page 547, 30 N.E. at page 589) that 'a very clear case should be made before the court should proceed in lunacy proceedings, in the absence of actual personal and written notice to the party, and that, unless such a case is made by the petition or affidavits, and an order made by the court dispensing with personal notice and providing for notice to relatives or others in lieu of personal notice, an adjudication, in the absence of such notice, should be set aside.'

The order below was nevertheless affirmed on the ground that appellant was permitted to '<u>traverse, not the inquisition, but the original petition, thereby putting him in the same position as upon an original hearing thereon</u>', (emphasis supplied) and for other reasons making it very clear that a full opportunity had been presented for appellant to litigate the question of his sanity.

"Appellant contends that section 76 does not cure the defect in section 74 because the hearing it provided for is after, rather than before, the order of certification has become final, and that she will have no means of determining what proof will be offered against her. This contention is wholly without merit, inasmuch as the finality of the order is subject to review under section 76. Moreover, the Supreme Court of the United States, in somewhat analogous situations, has made it clear that the provisions of an act authorizing the seizure of property without a prior judicial hearing are 'rescued from constitutional invalidity' by provisions affording the claimant a subsequent judicial hearing as to the propriety of the seizure (Societe Internationale, etc. v. Rogers, 357 U.S. 197, 211, 78 S.Ct. 1087, 1095, 2

L.Ed.2d 1255, see also, Falbo v. United States, 320 U.S. 549, 554, 64 S.Ct. 346, 348, 88 L.Ed. 305).

"This principle has been extended to commitment cases by several State courts, and ex parte commitment for an indefinite time has been upheld where the statute made adequate provision for the allegedly mentally ill person to test the legality of his confinement after his admission (In Re Petition of Crosswell, 28 R.I. 137, 66 A. 55; Dowdell, Petitioner, 169 Mass. 387, 47 N.E. 1033; Payne v. Arkebauer, 190 Ark. 614, 80 S.W.2d 76; In re Bryant, 214 La. 573, 38 So.2d 245). Precisely such a right is given to appellant by virtue of the provisions of section 76."

Therefore, on the question of adequate notice to commence the running of the 30-day period in which one may demand court review before a jury, the Court stated:

> "The really crucial question involved in this appeal is: Does section 76 provide the adequate notice to appellant that the 30-day period, in which she must make her demand for a jury trial, has commenced to run? Obviously, the

> 'right to be heard has little realty or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest' (Mullane v. Central Hanover & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865). Furthermore, the 'notice must be of such nature as reasonably to convey the required information', for, as the court stated, 'when notice is a person's due, process which is a mere gesture is not due process' (339 U.S. at pages 314-315, 70 S.Ct. at page 657, supra).
>
> "As previously noted, the Appellate Division held that the 30-day period within which judicial review may be sought does not commence to run until the expiration of 60 days from the making of the commitment order. The court did not require actual notice, nor did it suggest how the confined person would ever become aware that his time to demand a jury trial had commenced to run. To imply such notice from the mere provisions of the statute by virtue of the presumption that the confined person knows the law is, in our judgment, highly unrealistic. Moreover, we believe that such implied or constructive 'notice' falls short of even the 'mere gesture' which was held to be insufficient

in the Mullane case (supra)."

Actual notice to one in confinement was prescribed as being within the legislative intention:

> "Nothing short of actual personal service of notice upon the allegedly ill person can suffice to commence the running of the 30-day period (see People ex rel. Sullivan v. Wendel, 33 Misc. 496, 498, 68 N.Y.S. 948, 949). The arguments advanced in favor of dispensing with notice of the original application for the commitment order lose their vitality once the patient has been received in custody by the hospital authorities. Surely the experience of receiving notice that a possible means of release is available can hardly aggravate the condition of a person presently restrained of her liberty against her will. Moreover, once in confinement the patient can no longer be considered a danger to society, to herself or others for she will be under the care, observation and watchful eyes of the hospital staff. (emphasis supplied)

"Although section 76 does not expressly provide for such notice, we find precedent for construing the statute so as to provide therefor in People ex rel. Morriale v. Branham,

291 N.Y. 312, 52 N.E.2d 881, supra. In that case, appellant was restrained in confinement after the expiration of his prison term by reason of an order adjudging him to be a mental defective, entered pursuant to the provisions of section 440 of the Correction Law, Consol. Laws, c. 43. Appellant had been given no notice of the application for such an order, and had no opportunity to challenge the ex parte assertion that he was a mental defective. Chief Judge Lehman noted that the statute, which did not require that notice of the application be given to the prisoner, may well be unconstitutional. Therefore, speaking for a unanimous court, he stated (291 N.Y. at page 317, 52 N.E.2d at page 882, supra): '[Such a statute] must if possible be given a construction which will not offend constitutional guarantees of liberty or offend fundamental concepts of the common law. Unless the statute provides expressly or by necessary implication that an adjudication may be made without notice to the person whose detention or restraint is sought, we may reasonably find implicit in the statute a direction that the judicial decision and decree shall be made only in accordance with due process of law after notice and opportunity to be heard.' (Emphasis supplied.) See, also, Wong Yang Sung v. McGrath, 339

U.S. 33, 50, 70 S.Ct. 445, 454, 94 L.Ed. 616; Hecht v. Monaghan, 307 N.Y. 461, 468, 121 N.E.2d 421, 424."

The true purpose of Section 76 was thought to be an absolute safeguard to traverse the findings of an ex parte non-judicial certificate of commitment:

> "Appellant's final contention is that the statute before us is unconstitutional because the continued confinement after the expiration of the 60-day period provided for in the original commitment order results from the ex parte filing of a certificate by a nonjudicial officer, whose findings are not traversable by the alleged mentally ill person. Of course they are traversable under section 76. Moreover, the maker of the certificate is not purporting to exercise the office of a Judge, but the Judge has in effect made the person named in the statute his agent to observe the patient and treat him if necessary, and if, on the basis of such observation and treatment, the patient requires further care (that is, more than 60 days), the Judge requires merely that the person named in the statute file his certificate in the County Clerk's office. Furthermore, the initial order itself provided for

> its becoming a final order (although subject to review) upon the filing of the certificate within 60 days. Thus at least tentative finality resulted from an order made by a judicial officer and not from the mere fact that a certificate was filed and, if a review is demanded, the findings of the medical officer may be challenged, whereupon an additional order will be made by the court." (emphasis supplied).

The Court then concluded:

> "The continuance of confinement beyond the temporary period, under subdivision 7 of section 74, where the person in charge of the institution 'finds that such patient is in need of continued care and treatment' is not subject to successful constitutional challenge as violative of due process or otherwise, so long as the patient has the right to a prompt and complete hearing or review of the determination ab initio.
>
> "Her continued confinement may be challenged immediately after the filing of the certificate under subdivision 7 of section 74, but the 30-day period of limitation withdrawing that right may not begin until notice of the filing has been given her. As to this appellant, the 30-day period has not begun to

run.

"Inasmuch as the initial order is subject to the provisions of section 76, it cannot be final where review is invoked until after a determination by the court in the section 76 proceeding. Thus appellant is in fact offered the opportunity to challenge, before the court, the finding as to the need for continued treatment before that finding becomes conclusive upon her, and due process is thus satisfied.

"We do not agree with the Appellate Division that after 90 days the patient is forever barred. This holding, in our view, would render the statute unconstitutional."

An examination of the record on appeal contains no mention of Section 76. An examination of the medical certificate annexed to the petition for involuntary commitment reveals that at line 155, No. 5, personal service upon the appellant is not suggested because it "would unduly disturb patient." The purpose of that paragraph is to set forth "reasons" why personal service

would be "detrimental to said patient" thus enabling the Court to decide whether personal service should be directed. It is submitted that merely stating "would unduly disturb patient" is insufficient as a matter of law to dispense with personal service upon appellant. Certainly personal service of a petition for involuntary commitment would "unduly disturb" a perfectly normal person much less one mentally ill. It was a travesty if not a severe violation of the statute in dispensing with personal notice of the proceedings to the appellant.

The gravamen of Section 76 of the Mental Hygiene Law is to protect against such violations. However, the appellant did not have the benefit of that protection. In fact, the appellant never was afforded any opportunity to be heard in the proceedings. The only reason that this Court, in Coates, felt that

Section 74 of the Mental Hygiene Law was not constitutionally deficient is because of the provision of Section 76. In Coates this Court made mention of the reasons why personal service of the petition was not made upon the party. Judge Froessel stated that:

> "On April 17, 1957 appellant was certified to the Rochester State Hospital by order of a County Judge upon the petition of her husband and the brief joint medical certificate of two examining physicians. Personal service of notice of the application was dispensed with, pursuant to subdivision 3 of section 74, by reason of the following statement in the physicians' certificate: 'Personal service of notice would be <u>aggravating</u> and <u>detrimental</u> to patient in her present mental state.' No facts were stated in support of this conclusion, and it would appear that appellant was not personally seen by the court prior to the issuance of the order. No hearing appears to have been demanded, as provided for in subdivision 5 of section 74."

In the case sub judice it

appears that the same omissions occurred. This Court reasoned in Coates that the post-review provision of the statute, since renumbered, was the only feature that saved it from constitutional death. This appellant received no "investigation" after commitment. The record is devoid of any effort for the implementation of Section 76. The record proceeds from the order of commitment in 1955 to 1968. It must be remembered that the post-review provisions of Section 76 would have placed ADELYN CRAWFORD in the same position as upon the original hearing with the further benefit of a trial by jury. The entire proceeding was "star chamber" and invalid.

Here, too, the thirty-day period in which the appellant may demand a jury trial has not commenced to run. Having received no notice of the proceedings she could not have exercised the rights afforded by Section 76. Actual

personal service is required. There is no proof in the record that ADELYN CRAWFORD ever received notice of the proceedings against her until 1968. The proceedings were defective and thus tainted all matters thereafter. The order of commitment was invalid and the actions of an institution of the State, Harlem Valley State Hospital, permitted the retention of the appellant.

In Bartlett v. State, (4th Dept., 1976) 52 A.D.2d 318, 383 N.Y.S.2d 763, there is an excellent quotation from O'Connor v. Donaldson, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396, wherein Mr. Justice Stewart stated:

> "The jury found that Donaldson was neither dangerous to himself nor dangerous to others, and also found that, if mentally ill, Donaldson had not received treatment. That verdict, based on abundant evidence, makes the issue before the Court a narrow one * * *.
>
> "Given the jury's findings,

> what was left as justification for keeping Donaldson in continued confinement? The fact that state law may have authorized confinement of the harmless mentally ill does not itself establish a constitutionally adequate purpose for the confinement (citations omitted). Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after the basis no longer existed (citations omitted).
>
> "A finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that that term can be given a reasonably precise content and that the 'mentally ill' can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.
>
> * * * * * * * *
>
> "May the State fence in the harmless mentally ill solely to save its citizens from exposure to those whose ways are different? One might as well ask if the State, to

avoid public unease, could incarcerate all who are physically unattractive or socially eccentric. Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty (citations omitted).

"In short, a State cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. * * *"

Mr. Justice Burger concurred:

> "There can be no doubt that involuntary commitment to a mental hospital * * * is a deprivation of liberty which the State cannot accomplish without due process of law * * *. Equally important, confinement must cease when those reasons (for confinement) no longer exist."

The foregoing quotation reflects the true spirit of O'Connor v. Donaldson. The lower court's statement that the gist of O'Connor is that intentional acts on the part of State to deprive one of due process shall not be permitted is not its

only pronouncement.

In Bartlett, the patient was involuntarily confined for 37 years in a mental institution. The Court felt that having received little or no treatment during that period of time, the patient should have been released for outpatient care, and that the State could be held responsible for failing to provide that care.

ADELYN CRAWFORD must have an opportunity to prove exactly what occurred during her years of confinement. The decisions cited in the opinion below deal with the sufficiency of evidence presented <u>at trial</u> in the Court of Claims. ADELYN CRAWFORD has not received the chance to present any evidence and thus create a record.

See Troutman v. State, (3rd Dept., 1948), 273 App.Div. 619, 79 N.Y.S. 2d 709, wherein the Court stated:

"The claim herein was dismissed in the Court of Claims chiefly upon the ground that when claimant was originally committed by the County Court of Clinton County to the Dannemora State Hospital the court had jurisdiction both of the subject matter and the person of claimant. We are unable to agree with this conclusion. Undoubtedly the court had jurisdiction of the subject matter in an abstract sense but it had no jurisdiction of the person of the claimant because no notice had been given to him. True it is that section of the Correction Law under which claimant was committed by the County Court contains no requirement for notice (Correction Law, § 384). But in constructing a similar section of the Correction Law (section 440) relating to retention of mental defectives after the expiration of their terms of imprisonment it was held that notice to a prisoner is required by implication. That is to say, that even though the statute does not expressly require that notice of the application for the retention of a prisoner after the expiration of his term shall be given to a prisoner, nevertheless he is entitled to such notice as a matter of due process. People ex rel. Morriale v. Branham, 291 N.Y. 312, 52 N.E.2d 881. By all the principles of analogy

the rule stated in the case cited must apply also to section 384 of the Correction Law, and by the same process of reasoning it must be held that the order committing claimant as an insane person was void because no notice was given.

"The opinion of the court below cites several cases to the effect that where a court has acquired jurisdiction in a case or proceeding its order or judgment therein affords protection to all persons acting under it although it may be afterward set aside or reversed as erroneous. But in those cases the court had jurisdiction which was lacking in the present case. Also the court below cites the general rule that a judgment of a court which has jurisdiction of a person and subject matter is binding until reversed and cannot be attacked collaterally. That is true of course, but where jurisdiction is lacking any judgment or order may be attacked collaterally or otherwise, and the person injured thereby is not required to have it vacated or reversed on appeal. No one, we think, would dispute the proposition that a judgment or order entered without notice of any kind is completely void for lack of jurisdiction and may be attacked in any manner that a party sees fit. German Savings & Loan Society v.

Dormitzer, 192 U.S. 125, 24 S.Ct. 221, 48 L.Ed. 373; Ferguson v. Crawford et al., 70 N.Y. 253, 26 Am.Rep. 589; O'Donoghue v. Boies, 159 N.Y. 87, 53 N.E. 537; Matter of Docy v. Clarence P. Howland Co., 224 N.Y. 30, 120 N.E. 53. The cases cited deal mostly with property rights but certainly the rule would not be less embracive in a case involving personal liberty."

The Supreme Court, Westchester County, lacked jurisdiction of the appellant. By not directing personal service upon ADELYN CRAWFORD and thereafter depriving her of an opportunity to be heard, all jurisdictional control of the appellant ceased. In Harty v. State of New York, (3rd Dept., 1968), 29 A.D.2d 243, 287 N.Y.S.2d 306, it was said:

> "However, this court has previously held that where the illegal imprisonment is pursuant to legal process which is valid on its face, the State cannot be held liable in damages for wrongful detention. (Natasi v. State of New York, 275 App.Div. 524, 526, 90 N.Y.S.2d 377, 379; affd. 300 N.Y. 473, 88 N.E.2d 658.) An

> exception to the rule that the State need not respond in damages where the commitment is valid on its face appears to be where the court issuing the process lacked jurisdiction of the person or the subject matter. (Troutman v. State of New York, 273 App.Div. 619, 621, 79 N.Y.S.2d 709, 711; Hicks v. State of New York, 22 A.D.2d 837, 838, 253 N.Y.S.2d 814, 815.)"

The same principle was applied in criminal proceedings wherein a prison term has expired, and the prisoner was civilly committed without a determination that he was mentally ill. The Supreme Court of the United States, in Baxstrom v. Herold, 383 U.S. 107, 86 S.Ct. 760, 15 L.Ed.2d 620 (1965), made the following pronouncement in that regard:

> "We hold that petitioner was denied equal protection of the laws of the statutory procedure under which a person may be civilly committed at the expiration of his penal sentence without the jury review available to all other persons civilly committed in New York. Petitioner was further denied equal protection

of the laws by his civil commitment to an institution maintained by the Department of Correction beyond the expiration of his prison term without a judicial determination that he is dangerously mentally ill such as that afforded to all so committed except those, like Baxstrom, nearing the expiration of a penal sentence.

"Section 384 of the New York Correction Law prescribes the procedure for civil commitment upon the expiration of the prison term of a mentally ill person confined in Dannemora. Similar procedures are prescribed for civil commitment of all other allegedly mentally ill persons. N.Y. Mental Hygiene Law §§ 70, 72. <u>All persons civilly committed, however, other than those committed at the expiration of a penal term, are expressly granted the right to de novo review by jury trial of the question of their sanity under § 74 of the Mental Hygiene Law</u>. Under this procedure any person dissatisfied with an order certifying him as mentally ill may demand full review by a jury of the prior determination as to his competency. If the jury returns a verdict that the person is sane, he must be immediately discharged. It follows that the State, having made this substantial review proceeding generally available on this issue, may not, consis-

tent with the Equal Protection Clause of the Fourteenth Amendment, <u>arbitrarily withhold it from some</u>."

The review provisions of Section 76 (then Section 74) were held to apply to the question:

> "The capriciousness of the classification employed by the State is thrown sharply into focus by the fact that the full benefit of a judicial hearing to determine dangerous tendencies is withheld only in the case of civil commitment of one awaiting expiration of penal sentence. A person with a past criminal record is presently entitled to a hearing on the question whether he is dangerously mentally ill so long as he is not in prison at the time civil commitment proceedings are instituted. Given this distinction, all semblance of rationality of the classification, purportedly based upon criminal propensities, disappears.
>
> "In order to accord to petitioner the equal protection of the laws, he was and is entitled to a review of the determination as to his sanity in conformity with proceedings granted all others civilly committed under § 74 of the New York Mental Hygiene Law. He

> is also entitled to a hearing under the procedure granted all others by § 85 of the New York Mental Hygiene Law to determine whether he is so dangerously mentally ill that he must remain in a hospital maintained by the Department of Correction. The judgment of the Appellate Division of the Supreme Court, in the Third Judicial Department of New York is reversed and the case is remanded to that court for further proceedings not inconsistent with this option."

An examination of the Certificate of Justice Relating to Personal Service (29)* shows that the reasons for dispensing with personal service were that it "would unduly disturb patient" and "[T]here are no relatives in Westchester County." We have hereinbefore discussed the first reason as being constitutionally invalid. The second reason is even more vacuous when we consider that the appellant's mother, Anna Cummings,

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* Numbers in parentheses reflect pages in Record on Appeal

residing in Brooklyn, New York, was eventually appointed her committee. Her residence was no bar to her appointment as a fiduciary, however, it was sufficient to sustain a finding that personal service of the petition, the core of the due process, was unnecessary. Having afforded no notice to appellant the certification was void. However, post-certification review under Section 76 could save that result. Here we have none, only the filing of the result in the Office of the Clerk of the County of Westchester.

POINT II

THE CONSTITUTIONAL ISSUES ARE CONTAINED IN THE CLAIM FILED WITH THE COURT OF CLAIMS.

In Paragraph "3" of her verified claim (97-98) the appellant stated that she was never "given any hearing or

any [criminal] charge."

In Paragraph "7", it is alleged that [T]he Director of said institution... kept her forcibly confined therein....

Paragraphs "5" and "6" of the verified claim recite the role of the respondent, its agents, servants and employees, in acting upon an invalid retention of appellant.

Paragraph "7" is crucial -- it states, in effect, that appellant received no notice of any kind that she violated any law prior to her arrival at Harlem Valley State Hospital.

Paragraph "9" also states that the appellant never received the order of commitment or any papers in support thereof although she repeatedly requested receipt of these papers.

Contrary to the opinion before, there are express statements which raise the issues discussed in Point I of this

brief.

Furthermore, in her affidavit in opposition to the motion for summary judgment in the Court of Claims, the appellant raised the question of personal service upon her of the order and support papers (66-67).

It is interesting to note that in a two-year survey of New York's mental health system by the Department of Mental Hygiene, it was revealed that more than a fourth of the 26,000 adult patients in mental hospitals are not ill enough to be kept there. Actually the figure is 28%. New York Times, 1/14/78.

It is one thing to discuss the deficiencies of statutory enactment as reflective of "climates and attitudes" yet, another to realize that only through a failure on the part of the State to protect the constitutional rights of the appellant through strict adherence to the

law of the State and Nation that ADELYN CRAWFORD spent eighteen years in confinement.

The concept of abnormal behavior is ephemeral and that is the very reason for constitutional safeguards when we realize the difficulty in assessing such behavior. The system is full of contradictions. Psychiatry has never really proven what is normal or abnormal behavior. The conformity to normal conduct is really what is promulgated in the community. For physicians of the State to force their own concepts upon individuals suspected of abnormal behavior is reprehensible. To prevent such results, the individual has recourse to the Courts for hearing by his or her peers. This access is the true protection. ADELYN CRAWFORD received none of these benefits. She should be permitted to litigate her claim in the Court of Claims where her own medical

experts can testify as well as she in support of her contentions. Only after that procedure is completed can justice be truly served. To sever her access to the Courts (a route she never travelled) would elevate legal niceties over the basic substantive issues of this case. ADELYN CRAWFORD must have her day in Court.

P... 21
EXHIBIT D

PSYCHIATRIC INSTITUTE

March
30
1955

#A41152

Confidential

ADELYN CRAWFORD, Age 37
White Plains, N. Y.

Honorable Mann Brewer
Justice of the Peace
Court of Special Sessions
Town of Mamaroneck
Mamaroneck, N. Y.

Honorable Sir:

The above-named patient has received our customary psychiatric, physical and laboratory examinations. We have obtained additional history concerning her case from outside sources, and we have studied the voluminous correspondence she has been carrying on with various parties involved in her delusional system.

We have reached the conclusion that the patient, by reason of insanity, cannot defend herself. It is our recommendation that the charges against her be dismissed, so that she may be certified to a State Mental Hospital for care and treatment.

With the consent of Your Honorable Court, we shall initiate certification proceedings forthwith.

Respectfully submitted,

Fred V. Rockwell, M. D.,
Chief Psychiatrist

Sworn to

Arabelle J. O'Brien, M. D.,
Assistant Chief Psychiatrist

Severally subscribed and sworn to before me this 30th day of March, 1955.

EXHIBIT D

EXHIBIT E 22

(Rev. July 1949)

STATE OF NEW YORK—DEPARTMENT OF MENTAL HYGIENE

This form must be filed in the office of the County Clerk and a certified copy must be filed in the office of the Department of Mental Hygiene. A copy should also be retained by the Institution.)

CERTIFICATE OF DIRECTOR, PHYSICIAN IN CHARGE, OR DULY DESIGNATED MEDICAL OFFICER

HARLEM VALLEY STATE HOSPITAL
(Name of Institution)

In the Matter
of
An Application for the Certification
of
ADELYN CRAWFORD - 648863
An Alleged Mentally Ill Person

County of Dutchess } ss.

1. That pursuant to an order of certification signed by the Hon. George M. Fanelli

Justice, Surrogate or Judge of the County Court of the County of

Westchester on the 6th day of April, 19 55, and filed in the office

of the County Clerk of Westchester County, Adelyn Crawford (Name of patient) was

admitted to the Harlem Valley State Hospital (Name of institution) for observation for a period

not exceeding sixty days.

2. Harry Bittle, M.D., being duly sworn, deposes and says

that he is the { director in charge of / physician in charge of / duly designated medical officer of } Harlem Valley State Hospital (Name of institution) at

Wingdale N. Y.

3. That he finds the said Patient to be mentally ill.

4. That he considers said Adelyn Crawford (Name of patient) to be in need of continued care and treatment.

5. That the facts stated and information contained in this certificate are true to the best of his knowledge and belief.

Harry Bittle M. D.

Assistant Director

Subscribed and sworn to before me this

17 day of May, 19 55

Claude J. Wood

Notary Public

(Official title)

EXHIBIT E

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EXHIBIT E

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STATE OF NEW YORK—DEPARTMENT OF MENTAL HYGIENE

FORM FOR THE COURT CERTIFICATION OF THE MENTALLY ILL PREPARED BY THE DEPARTMENT OF MENTAL HYGIENE, PURSUANT TO THE PROVISIONS OF SECTION 74 OF THE MENTAL HYGIENE LAW.

The Mental Hygiene Law declares that the words "mentally ill," shall have equal significance to the words "insane," "insanity," "lunacy," "mentally sick," "mental disease" and "mental disorders."

A certification to a civil institution is invalid if any other form is used.

Additional copies of this form may be obtained upon application to this department, health officers, county clerks, public welfare officers, commissioners of public welfare, directors of state hospitals and physicians in charge of licensed private institutions for the mentally ill.

Read the following instructions before filling out this blank.

INSTRUCTIONS

Admission procedures are shown in Sections 70, 71, 72, 73, 74 and 75 of the Mental Hygiene Law. A summary of these sections is given herewith.

What Is Required for Court Certification. For court certification there is required (1) a petition, (2) a medical certificate made by two certified examiners and (3) a judicial order. These are provided for on this blank.

1. The Petition. The petition is to be made by any person with whom an alleged mentally ill person may reside or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of any such person, or the nearest relative or friend available, or the committee of such person, or an officer of any well-recognized charitable institution or agency or home, or any public welfare officer of the town, any town or city service officer, or commissioner of public welfare of the city or county in which any such person may be at the time. The person making the petition must be at least 21 years of age. The petition should contain a plain statement of the reasons why the patient should be certified to a hospital for the mentally ill.

2. The Medical Certificate. The medical certificate consists of two parts, (a) history obtained by physicians, (b) examination by physicians. The certificate must be made by two physicians who are registered with the Department of Mental Hygiene as certified examiners; otherwise it is invalid and of no effect. Neither of the examiners shall be a relative of the patient, or of the petitioner, or a manager, officer, trustee, visitor, director, proprietor, stockholder, or have any pecuniary interest or be a resident physician in the institution to which it is proposed to certify the patient.

The two physicians must make a joint examination of the patient and the date of this joint examination becomes the date of the medical certificate. The medical certificate must state the facts and circumstances upon which the judgment of the examiners is based and shall show that the condition of the patient is such as to require observation and treatment in the institution to which admission is being sought.

The petition and medical certificate must be presented to a judge of a court of record of the city or county, or a justice of the supreme court of the judicial district in which the patient resides or may be, and the order of certification signed by him within 10 days inclusive from the date of the medical certificate.

Service of Notice on Patient. Notice of the proceeding shall be served on the patient at least one day before the order of certification but the judge may dispense with personal service, and he shall dispense with such service on the patient if the examining physicians state in writing under oath that personal service would be detrimental to the patient.

Service on Others. If the petition is made by a person other than a relative of the patient, notice shall be served upon the nearest relative within the county; if none within the county, upon the person with whom the patient may reside or at whose home he may be, or in their absence upon a friend of the patient. If none is known such service shall be dispensed with by the judge in writing.

SPACE FOR BINDING

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3. Judicial Order. On the return day of the notice of application for the certification of a person to an institution any relative or near friend in behalf of such alleged mentally ill person may demand from the judge that a hearing be held before him on such application. The judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him, at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon the adjourned date if it be determined that such person is in need of observation and treatment, the judge shall forthwith issue his order directing the admission of the patient to an institution designated by the Commissioner for the care and treatment of the mentally ill or make such other order as is provided for under Section 74 of the Mental Hygiene Law.

If no demand for a hearing is made by the patient or by anyone in his behalf, the judge may issue the order of certification. Said order shall certify a patient to an institution for a period not to exceed 60 days unless within said period the director or the physician in charge or the medical officer designated by either of them shall file with the clerk of the county clerk a certificate showing that said patient is in need of continued care and treatment. A copy of this certificate must be filed in the office of the Department of Mental Hygiene and a copy should be retained by the institution. Upon the filing of said certificate the order then becomes final.

Where Patient May Be Certified. The patient, if he is not under a criminal charge or indictment, may be certified to a state hospital designated by the Commissioner or to a licensed private institution, or if harmless, to the custody of his committee or a relative.

The entire document relating to the certification of the patient shall be presented to the judge to be forwarded to the director of the institution to which the patient is certified.

The patient must be received at the institution within 10 days inclusive from the date of the order of certification.

Provision for Rehearing. If the person ordered to be certified or any relative or friend in his behalf be dissatisfied with the final order of a judge or justice certifying him, he may, within 30 days after the making of such final order, in

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a rehearing and review of the proceedings already had from the order of certification upon petition to a justice of the supreme court other than the justice making the order of certification, who shall cause a jury to be summoned and shall try the question of the mental state of the person so certified. Proceedings under an order of certification, however, are not stayed, pending an appeal, except when specially ordered by a justice of the supreme court.

When Judicial Order Becomes Final. At any time prior to the expiration of 60 days from the date of the judge's order, the director or the physician in charge or the medical officer designated by either of them, or the person in charge of the institution to which the patient has been admitted for observation and treatment may, if he finds that such patient is in need of continued care and treatment, file in the office of the county clerk, a certificate setting forth his findings and the need for the continued care and treatment of such patient. Upon the filing of such certificate, the order theretofore made by the judge shall become a final order and such patient shall thereafter remain in such institution, or any other institution, to which he may be transferred, until his discharge in accordance with the provisions of the law.

Costs of Certification. The costs of certification are paid from the patient's estate or by the near relatives of the patient, except in the case of a poor or indigent patient. In the latter case such costs and the necessary expense of clothing, medical care and nursing as well as fees of certified examiners, shall be a charge on the county, when the county or any town or city in the county secures the certification. In the city of New York these expenses and the expenses of medical witnesses may be audited and allowed by the judge appointing the certified examiners or by the comptroller of the city and shall be paid by the treasurer of the city by order of the comptroller from the court funds, and charged to the proper county within said city. The fees or expenses of health officers for duty performed in caring for mentally ill persons as required by the Mental Hygiene Law shall be determined and allowed by the judge or justice ordering the certification, and shall be a charge upon the county in which the patient resides or may be.

Classes That May Not Be Certified to a State Hospital. The following classes of persons cannot be certified to a state hospital: (a) Idiots not mentally ill, (b) other feebleminded persons not mentally ill, (c) inebriates not mentally

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ill, (d) drug addicts not mentally ill, (e) epileptics not mentally ill. The director or officer in charge of a state hospital may refuse to admit a patient if the certification papers are not properly made out, or if, in his judgment, the person ordered certified is not mentally ill within the meaning of the law.

Emergency Admission on Incomplete Court Order. If the patient is in such condition that it would be for his benefit to receive immediate care and treatment, or if he is dangerous, he may be received at an institution authorized by law to care for the mentally ill, providing the petition and medical certificate shall have been executed as above described. The certificate must show adequate reasons why the patient should be received by the institution without a judicial order. Two copies of the form must be made out in such cases, one to accompany the patient, the other to be signed by the judge and sent to the institution within 10 days. No person so admitted can be detained in the institution for a period longer than 10 days from and inclusive of the date of the medical certificate, unless such person be certified in accordance with the provisions of Section 74 or unless such person be discharged or admitted under the provisions of Sections 71 or 73. Should such person be certified under Section 74, the director or the physician in charge or the designated medical officer or the person in charge must file a certificate of detention within 60 days from the date of the order of certification if the patient requires further care and treatment.

Admission on Certificate of Health Officer. The director or physician in charge of any state or private licensed institution for the mentally ill, except the Matteawan and Dannemora state hospitals, may receive as a patient for a period not exceeding 60 days any person who needs immediate care and treatment because of mental illness other than drug addiction or drunkenness when requested by the county commissioner of health, health officer, or designee of either of them in writing on Form 818-D. M. H., after a personal examination of the patient. Unless the patient signs a request to remain as a voluntary patient, the county comissioner of health, health officer or designee making the application shall cause such patient to be examined by one or two certified examiners and if found mentally ill, the patient shall be admitted under Section 73 or 74, or, if found sane, the patient shall be removed from the institution before the expiration of 60 days. A patient in the armed forces of the United States who has been discharged therefrom for psychiatric care and treatment to any veterans facility in this state may be detained by said facility for not more than 24 hours without the need of complying with this section.

SPACE FOR BINDING

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Voluntary Admission. Certain mentally ill persons may be received in a state hospital or licensed private institution, without being certified upon making voluntary application for treatment therein. (Form 41-Med.) No person is a proper case for voluntary treatment if his mental condition is such as to render mechanical restraint necessary, or if he is not clearly competent to make application for admission, or if his condition is such as to render him dangerous to himself or others. Such person should present himself and sign the form willingly. If the person is under 21 years of age application may be made by the parent or legal guardian or next of kin of such person. (Form 41a-Med.) Blanks for voluntary application may be obtained from the directors of the state hospitals, or from physicians in charge of licensed private institutions.

Admission on Physician's Certificate. A mentally ill person who does not object may be admitted to a civil state hospital or licensed private institution on a verified petition as required for court certification, accompanied by a medical certificate executed by a certified examiner on a form prescribed by the Commissioner of Mental Hygiene and dated not more than 10 days before the date of admission. (Form 92-D. M. H.) In the discretion of the director a person may be detained for 60 days and thereafter until 15 days after he, or any person in his behalf, shall make written request for release. If the director or physician in charge shall deem further detention necessary he shall, after due notice is given as provided in Section 73, so certify to a judge of a court of record, who may, in his discretion, forthwith issue an order certifying such person to such institution for care, custody and treatment. (Form 92a-D. M. H.)

Reimbursement. Subdivision 2 of Section 24 of the Mental Hygiene Law provides that the committee, guardian, or trustee of a trust fund established for the support of a patient, shall be jointly and severally liable and responsible for payments for care, treatment, and maintenance; and the husband, wife, father, mother, and children of such patient, if such relatives are of sufficient ability, shall also be jointly and severally liable and responsible for such payments. In order to assist the Department of Mental Hygiene in determining the ability of the legally liable relatives to pay for the care, treatment, and maintenance of the patient, the petitioner should be careful to provide the information requested as to names, mailing addresses, and ages of such relatives.

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EXHIBIT E

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Form 172-P. M. 9. (Revised January 1954)

STATE OF NEW YORK---DEPARTMENT OF MENTAL HYGIENE

FORM FOR THE COURT CERTIFICATION OF THE MENTALLY ILL PRESCRIBED BY THE DEPARTMENT OF MENTAL HYGIENE PURSUANT TO THE PROVISIONS OF SECTION 74 OF THE MENTAL HYGIENE LAW.

STATE OF NEW YORK

COUNTY Court, County of WESTCHESTER

PETITION

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION OF

ADELYN CRAWFOED
(Print name plainly)

AN ALLEGED MENTALLY ILL PERSON

To the Hon. George M. Fenelli, Justice ~~or~~ Judge of the

County Court of the county of Westchester

(For those authorized to make petition, see instructions, page I, line 16.)

The petition of Edwin L. Harmon, M. D., respectfully shows:
(Print name plainly)

1. That he is 21 years of age or older; that he is a resident of the town of Mt. Pleasant in the county of Westchester and that he is (if petition is made by a public officer, so state, and of what county, city or town) Director of Grasslands Hospital

~~Or, that he is~~ ~~of~~ ~~the alleged mentally ill person.~~

2. That the alleged mentally ill person now is at the house of Grasslands Hospital located at Valhalla, N. Y. in the town of Mt. Pleasant
(City, town or village)
in the county of Westchester

3. That the facts upon which the application is based are as follows:
(The petition should state the facts observed by, or the information known to, the petitioner, which would tend to show the existence of mental illness, such as irrational acts or statements, attempts at suicide and attempts or threats to injure others. It is important to describe any change that has occurred in the behavior and character of the patient.)

Patient has threatened to kill a man because he refuses to see her. She has written threateneng letters to him and broken into his apartment.

Exam and observation at Grasslands Psychiatric confirm that patient is mentally ill and in need of further hospital care and treatment.

This patient is a court case.

MAKE FOUR COPIES

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32 _____

33 _____

34 _____

35 _____

36 _____

37 _____

38 4. That he verily believes it to be for the best interest of the said person that an order be granted directing h

39 certification to an institution for the mentally ill. Harlem Valley State Hospital

40 5. Upon information and belief that the said alleged mentally ill person herein named is not under a criminal

41 charge or indictment. If this petition is being made in accordance with the provisions of Section 872 or 873 of the

42 Code of Criminal Procedure, specify the Section _____
(Section)

43 6. Upon information and belief that the following are the names and addresses of living close relatives of the

44 patient: (All must be given.)

EXHIBIT E

	Name	Approximate age	Number and Street	City, town or P. O.
45 Father	Bernard Cummings			
46 Mother	Anna Cummings		164 E. 31st St.,	Brooklyn, N. Y.
47 Husband				
48 Wife				
49 Children				
50				
51				
52				
53				

(Add sheet if necessary)

54 Wherefore, upon this petition and the medical certificate of certified examiners hereto annexed, your petitioner prays

55 that an order be granted adjudging the said person to be mentally ill and certifying h to an institution for care and

56 treatment of the mentally ill.

57 Dated April 4, 1955

58 STATE OF NEW YORK
59 County of Westchester
60 City, town or village of Mt. Pleasant } ss.:

Edwin L Hammon
(Petitioner's signature)

Grasslands Hosp., Valhalla, N. Y.
(Petitioner's address)

STATE FOR FINDING

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Edwin L. Harmon, M. D., being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me this 17th day of March, 1955

Richard D. Bash
RICHARD D. BASH
Notary Public, State of New York
No. Official Title
Qualified in Westchester County
Commission Expires March 30, 1957

Edwin L. Harmon
(Petitioner's signature)

MEDICAL CERTIFICATE OF CERTIFIED EXAMINERS

(This medical certificate shall be filled out only by two certified examiners after a joint examination. See instructions, page 1, line 23).

STATE OF NEW YORK
County of Westchester } ss.:
City, town or village of Mt. Pleasant

(a) HISTORY OBTAINED BY PHYSICIANS

Information furnished by _____ of _____, N. Y.

Who is a _____ of the patient.

1. Patient is at Grasslands Hospital county of Westchester

Nativity: state or country N. Y. S.; if foreign, date of arrival in U. S. _____

Port of entry _____ Steamship or line _____

Date and place of birth 9/27/17; Brooklyn, N. Y. Is he a citizen of the U. S.? yes

Is he a legal resident of New York State? Yes If so, of what county, city or town? [illegible], N. Y.

How long has he resided in New York State? life Address of patient [illegible], White Plains
(No. street) (City or town)

If less than five years in New York State, indicate number of years and States of previous residence _____

(a) _____

(b) _____

Sex M; color W; occupation Physician; single, married, widowed, separated, divorced. Religion [illegible]
(Strike out words not required)

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EXHIBIT F-18

85 Is patient a veteran? Yes — No — Which war? _____

86 Branch of service _____ Service Serial No. _____

87 Type of discharge _____ Compensation or Pension No. _____

88 Disability for which veteran is receiving compensation or pension _____

89 _____

90 Birthplace of father unknown ; of mother California

91 Legal residence of father, if living _____

92 Legal residence of mother, if living 164 E. 31st St., Brooklyn, N. Y.

93 Name and address of nearest known relative (state relationship) committee or correspondent _____

94 Mother: Anne Cummings, as above.

95 Has the patient had any mentally ill relatives? unknown

96 If so, state what relationship and whether paternal or maternal _____

97 Have any of the relatives been in institutions for mental illness? _____

98 If so, state name and relationship and give name and location of institution _____

99 _____

100 Has the patient been considered as of normal mental standard? yes

101 Institution or institutions where cared for in previous attacks, if any (give dates) none

SPACE FOR DIAGNOSIS

102 _____

103 Has patient been discharged from last institution? _____

104 Has the patient had treatment for syphilis? no

105 To what extent does she use liquor? minimal tobacco? excessive drugs? none

106 When did present attack begin? 6 yrs. ago

107 Was it characterized by depression, excitement, untidiness, destructiveness, suicidal or homicidal tendencies, delusions,

108 hallucinations, etc.? Excitement, suici al and homicial threats, obsessions and par. oid

109 delusions.

110 _____

111 What was first noticed? Hostility, demanding, threatening behavior.

112 _____

113 Past significant physical disease Sarcoidosis

114 _____

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(b) EXAMINATION BY PHYSICIAN

(For method to be followed in examination, see Instructions to Certified Examiners furnished by Department of Mental Hygiene.)

Physical condition (including any special test report) Within normal limits.; Blood Wass., neg.

Mental condition: The conduct of the patient (including the statements made to us by others) has been Patient's mood swings from elation to depression, at times very hostile and demanding.

The patient showed the following psychiatric signs and symptoms Patient well-oriented in all spheres, memory intact; speech coherent and rational. But at times circumstantial. Patient obsessed with idea that a certain man loves her and has the delusion that other people have been words to bring them together. She has ideas of reference--she believes apartment and has been prized and her phone tapped--she says she has been brought here to prevent her to propose to the man. Her reasoning and conclusions are shaky and judgment poor; insight lacking.

Does the patient show a tendency to injure self? no or to injure others? yes

What dangerous tendencies does the patient show? Threatened harm to friends.

Diagnosis: Schizophrenic reaction, paranoid type.

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EXHIBIT E

[illegible] a legal resident of [illegible]
(Print name plainly)

County of Westchester State of New York and Arbelle J. O'Brien, M. D.
(Print name plainly)

a legal resident of Scarsdale, county of Westchester, and State aforesaid, being severally and duly sworn, do severally certify and each for himself certifies with the exceptions which are hereinafter noted, as follows:

1. I am a certified examiner in accordance with Section 19 of the Mental Hygiene Law; a certificate of my qualifications as such examiner or certified copy thereof is on file in the office of the Department of Mental Hygiene, and I have received from the Department an acknowledgment of the receipt of the same.

2. I have with care and diligence personally observed and examined on the date of the certificate, namely, on the 1st day of April, 1955, Adelyn Crawford now residing or
(Insert name of patient)
being at Grasslands Hospital, in the county of Westchester and as a result of such joint examination, find and hereby certify to the fact that he is mentally ill and a proper subject for care and treatment in such institution for mental illness, as a mentally ill person under the provisions of the statutes.

3. I have formed this opinion from the history of the case and my examination of the patient as given above.

4. The reasons for considering this an emergency case are as follows: (For emergency cases only. See Instructions, page II, line 91.)

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SPACE FOR BINDING

5. It is my opinion that personal service on said patient would be detrimental to said patient for the following reasons. (See Instructions, Page I, line 35.)

Would unduly disturb patient.

6. That the facts stated and information contained in this certificate are true to the best of my knowledge and belief.

Severally subscribed and sworn to before me this 1st day of April 1955	X Fred V. Rockwell, M. D.
[signature]	Grasslands Hosp., Valhalla, N. Y. (Address)
Notary Public, State of New York	[signature], M. D.
Qualified in Westchester County	Grasslands Hosp., Valhalla, N. Y. (Address)
Commission Expires March 30, 1955	

CERTIFICATE OF JUSTICE OR JUDGE RELATING TO PERSONAL SERVICE

STATE OF NEW YORK

COUNTY COURT, COUNTY OF WESTCHESTER

Before the Hon. George M. Fanelli, County Judge of Westchester County, Justice, Surrogate or Judge

on the 6th day of April, 1955

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION
OF
ADELYN CRAWFORD
AN ALLEGED MENTALLY ILL PERSON

(1) I do hereby certify that, as appears by the affidavit of service herein, personal service has been made upon the alleged mentally ill person above named on ________, 19__, and upon ________ who is ________ (State relationship) of the alleged mentally ill person, or with whom he resides or at whose house he is (strike out words not required) by ________ who resides in the city, town or village of ________ in the county of ________

Or (2) I do hereby certify that I have dispensed with personal service, ~~or that I have directed substituted service~~ as provided by law upon the person hereinafter named for the following reasons:

Would unduly disturb patient.

There are no relatives in Westchester County

George M. Fanelli
(Justice, Surrogate or Judge)
County Judge of Westchester County

EXHIBIT E

ORDER OF CERTIFICATION

STATE OF NEW YORK

COUNTY COURT, COUNTY OF Westchester

Before the Hon. George M. Fanelli, Justice, Surrogate or Judge of County
(Print name plainly)

Court; county, ~~city or town~~ of Westchester on the 6th day of April, 1955

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION
OF
ADELYN CRAWFORD
AN ALLEGED MENTALLY ILL PERSON

Upon the petition of Edwin L. Harmon, M. D., dated April 1, 1955 and a medical certificate made by two certified examiners, which medical certificate is dated on the 1st day of April, 1955, and which is annexed hereto, and upon such other facts and information as were produced before me ~~(or a referee appointed by me)~~, and being satisfied that the above alleged mentally ill person is mentally ill and a proper subject for custody and treatment in an institution for the mentally ill within the meaning of the statute, and that she is not in confinement under a criminal charge, it is therefore hereby

ORDERED, That the said Adelyn Crawford be and hereby is adjudged mentally ill and that he be certified to Harlem Valley State Hospital, an institution
(Insert official title of institution)
for the treatment of mental illness, for observation and treatment for a period not exceeding 60 days.

ORDERED, That upon the filing of a certificate of the director or the physician in charge or the designated medical officer of the institution in the office of the County Clerk prior to the expiration of 60 days from the date of this order, that said alleged mentally ill person is in need of continued care and treatment, this order shall then become final.

ORDERED, That the director of the said hospital forthwith at the time of the admission of said alleged mentally ill person to said hospital, forward a verbatim copy of the entire proceedings herein to the office of the Clerk of Westchester County and to the Department of Mental Hygiene.

ORDERED, That the said papers so sent shall be sealed in the office of the County Clerk of Westchester County, and be exhibited only to the parties to the proceedings, or someone properly interested, upon the order of the Court.

Dated APR - 6 1955, 19

George M. Fanelli
(Justice, Surrogate or Judge)
County Judge of Westchester County

SPACE FOR BINDING

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EXHIBIT B

ORDER OF RETENTION

(See Instructions, Sec 1, line 42)

(If a hearing before a judge or referee be granted upon the demand of a relative or near friend or upon the motion of the judge, the following form shall be used, otherwise it should be omitted.)

STATE OF NEW YORK

_____ COURT, COUNTY OF _____

Before the Hon. _____, Justice, Surrogate or Judge

on the _____ day of _____, 19____

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION
OF

_____

AN ALLEGED MENTALLY ILL PERSON

An application for an order of certification of the above person, based upon the petition of _____ and upon a medical certificate dated _____, 19____, having been made, and (state name of relative and degree of relationship, or, if none, name of near friend) _____ having demanded a hearing upon such application, it is hereby

ORDERED, That a hearing on such application for an order of certification be had before the Honorable _____, Justice, Surrogate or Judge of the _____ Court at the _____ in (city, town or village) _____ County of _____ on the _____ day of _____, 19____, at ____ m., at which time testimony shall be heard touching the alleged mental illness of the aforesaid person, and if it be deemed advisable, said person may be examined either in or out of court.

The judge may (or if a referee be appointed, the referee herein named shall) hear such testimony and make such examination and report the same at once with the decision (or opinion) as to the mental illness of such person.

And that this order be served upon _____, the petitioner, and the following named persons.

_____ of _____

_____ of _____

_____

(Justice, Surrogate or Judge)

DECISION OF COURT AFTER HEARING

(Decision of court to be used only if a hearing is had.)

IN THE MATTER OF
AN APPLICATION FOR THE CERTIFICATION
OF

AN ALLEGED MENTALLY ILL PERSON

A hearing having been had upon the application of _____ for an order of certification of the said person to an institution for the custody, care and treatment of the mentally ill on the _____ day of _____, 19___, and testimony having been taken as required by law, I do hereby decide that the said alleged mentally ill person is mentally ill and is in need of observation and treatment in an institution for the treatment of mental illness.

Dated the _____ day of _____, 19_____

_____
(Justice, Surrogate or Judge)

[J-154]

In The

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-413

ADELYN J. CRAWFORD,

Appellant,

— against —

THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

ROBERT ABRAMS
Attorney General of the State
of New York
Attorney for The State of
New York
The Capitol
Albany, New York 12224
Telephone: (518) 474-7173

WILLIAM J. KOGAN
Assistant Solicitor General

PETER J. DOOLEY
Assistant Attorney General
of Counsel

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In The

Supreme Court of the United States

OCTOBER TERM, 1979

No.

ADELYN J. CRAWFORD,

Appellant,

— against —

THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

Now comes Robert Abrams, Attorney General of the State of New York (Jeremiah Jochnowitz, Assistant Solicitor General, of counsel) and moves this Honorable Court pursuant to Rule 16 of the Rules of this Court for an order to dismiss or affirm on the ground that no substantial federal question is properly before the Court insofar as the decision of the State court sought to be reviewed did not pass on any federal constitutional question, and the decision of the State court rests upon an adequate State ground.

Dated: November 29, 1979

ROBERT ABRAMS
Attorney General of the
State of New York
Attorney for Appellee

Statement

This is an attempted appeal from a State court determination in a civil action for damages arising out of an alleged false imprisonment. The State court held that appellant was properly committed to civil mental institutions under the laws in effect during the term of her confinement by courts of competent jurisdiction, and therefore, there was no false imprisonment.

Facts

Following appellant's arraignment on a charge of malicious mischief and forceable entry, she was ordered by the court to be psychiatrically evaluated to determine whether she was capable of understanding the charges against her and of assisting in her defense. After examination by two psychiatrists, the conclusion was reached that by reason of insanity she was incapable of defending herself and civil commitment was recommended (App Appendix, D-72). Appellant was thereafter certified by the Dutchess County Court to be mentally ill pursuant to the Mental Hygiene Law and was ordered committed on April 6, 1955 to Harlem Valley State Hospital. At that time, State law did not require periodic judicial review of orders of commitment, and the order of April 6, 1955 was not limited in duration. It was not until 1968 that Mental Hygiene Law § 73 was amended to require periodic additional retention orders to be secured if the hospital administration felt the patient's condition required such action.

Subsequent to this 1968 amendment, the hospital filed a petition on November 21, 1968 for appellant's continued retention for a period of twelve months, with notice served on appellant's Committee. (Appellant's mother, Anna Cummins had been appointed Committee on October 31, 1956, and served in that capacity filing annual accountings in Westchester County Supreme Court until she was relieved of her duties in June,

1962. Thereafter, an attorney, Richard Nadelman, was appointed successor Committee on September 17, 1962, and continued in that capacity, also filing annual reports with the court, until he was relieved on September 11, 1969.) An order was entered for a further retention of twelve months.

On June 18, 1969, an additional request for a further twelve month retention order was filed with notice to the appellant. A hearing was held before a Justice of the Supreme Court, Westchester County, at which appellant was represented by counsel, and testimony was heard from appellant and a hospital physician. A further twelve month retention order was made, and thereafter an additional 24 month retention order was sought and granted in 1970, after notice to appellant's Committee.

Subsequently, on November 9, 1972, appellant made a voluntary request for further hospitalization and she remained hospitalized voluntarily until discharged on January 24, 1973. Appellant thereafter brought on this civil action for money damages for an alleged false imprisonment.

ARGUMENT

APPEAL OR CERTIORARI DOES NOT LIE FROM THE ORDER AND JUDGMENT OF THE STATE COURT WHERE THE STATE COURT DID NOT PASS ON A FEDERAL QUESTION AND WHERE THE STATE COURT DECISION RESTS ON ADEQUATE STATE GROUNDS.

Let it be clear at the outset that this is not a proceeding seeking release from custody, nor a federal civil rights action. It is simply an action in tort against the sovereign State of New York, seeking money damages. The decision of the State court sought to be reviewed did not expressly pass on any federal question and therefore this appeal or certiorari, should not lie (*Newsom* v *Smith*, 365 US 604).

The State of New York, as sovereign, may be sued in tort only insofar as it has waived its sovereign immunity (cf *Edelman* v *Jordan*, 415 US 651; *Petty* v *Tennessee-Missouri Bridge Comm.*, 359 US 275; *McDonald* v *State of Illinois*, 557 F2d 596, cert den 434 US 966). The State courts herein have factually found that there is no allegation in appellant's claim that the original order of commitment in 1955 and the subsequent orders of further retention obtained in 1968, 1969 and 1970 were invalid on their face or that the courts lacked jurisdiction (App Appendix, A-7). Furthermore, as to any claims of negligence herein, the State of New York has not waived its immunity from liability for medical misdiagnosis, or for governmental and administrative determinations (App Appendix, A-8).

Appellant asserts that the State court lost jurisdiction by failing to serve her with the original notice of commitment. Such service was not at that time required by State laws (App Appendix, D-77), and while that may have made the order subsequently attackable, the order never was subsequently challenged and no jurisdictional defect would be apparent to the confining authorities. New York law concerning a civil action for money damages, protects its officials acting on commitment papers apparently valid, from liability even if there were a defect in the jurisdiction of the issuing court (*Nuernberger* v *State of New York*, 41 NY2d 111; *Woolsey* v *Morris*, 96 NY 311; *Ferrucci* v *State of New York*, 42 AD2d 359, affd 34 NY 2d 881).

In *Nuernberger, supra*, at pages 112-113, the New York State Court of Appeals held:

> "The issue, nevertheless, is whether the State is protected against a claim for false imprisonment when its administrative officials acted upon commitment papers issued by [a court lacking jurisdiction]. * * * [E]ven if such process or mandate is void, it does not automatically follow that one affected by any kind of 'void' process or mandate is entitled damages because those obligated to enforce the 'void' process or mandate performed the duty imposed upon them by law.
>
> * * *

> "Indeed, this Court has recognized that a defect in a court's 'jurisdiction' * * * may be a basis for habeas corpus relief, but no ground on which to recover damages for false imprisonment." (at p 115)

In *Woolsey* v *Morris*, 96 NY 311, the Court held (at 315):

> "[A] ministerial officer is protected in the execution of process regular on its face, issued by a court, body or officer having general jurisdiction of the subject matter, or jurisdiction to issue it under certain circumstances, although in fact, jurisdiction of the person or subject matter did not exist in the particular case."

In *Ferrucci* v *State of New York*, 42 AD2d 359, affd 34 NY 2d 881, the Appellate Division of the Supreme Court of the State of New York held (at p 361):

> "When the court issuing a commitment to a mental institution has jurisdiction and the legal process is valid on its face and does not of itself give notice of any legal invalidity, the State is not answerable in damages [cit. om.]; nor is it even liable for an illegal confinement, if made pursuant to court directives clothed with said attributes (*Jamieson* v. *State of New York*, 7 A D 2d 944; *Nastasi* v. *State of New York*, 275 App Div 524, affd. 300 N Y 473)."

Since New York State has not waived its immunity from liability for a tort action for false imprisonment where a commitment is predicated on court papers not apparently invalid, there is an adequate State ground for the decision sought to be appealed, and the federal question sought to be raised is not properly in issue. Moreover, this Court previously refused certiorari in a nearly identical case, *Dennison* v *State of New York*, 25 NY2d 904, cert den 397 US 923, wherein the New York Court of Appeals had held:

> "Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz: Claimant argued that his commitment in 1936 and his retention pursuant to the then existing section 384 of the Correction Law constituted a violation of his rights under the equal protection clause (see *Baxstrom* v. *Herold*, 383 U.S. 107), entitling him to

damages for his retention in a criminal rather than a civil hospital for the insane. The Court of Appeals considered this contention and held that claimant had no right to damages based on a retrospective application of *Baxstrom* v. *Herold* (*supra*)."

Accordingly, there is no substantial federal question supporting review by this Court; the State's waiver of immunity does not extend to the factual allegations of appellant's claim; and the appeal should be dismissed.

CONCLUSION

THE APPEAL SHOULD BE DISMISSED.

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Respectfully submitted,

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